THE

PUNJAB DIGEST

(Civil, Criminal and Revenue)

(1900 to 1922 both inclusive)

OF ALL THE CASES

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THE

PUNJAB DIGEST

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(1900-1922).

Vol. III.

DAMAGES.

——*Assignment—Contract for supply of goods—Assignment after cancelling the order—Assignee's right to get refund of the earnest money.*

Held, that an assignee of a contract to supply goods is entitled to get refund of the earnest-money and the amount paid by him on account of the profits from the assignor when it is found that the assignor had cancelled the contract before the assignment. (Le Rossignol, J.)

Narain Das Widwa *v.* Har Bhagwan Kania Lal.—22 P.L.R. 1917; 7 P.W.R. 1917.

——*Attachment—Wrongful attachment—Proof of—Malice if essential.*

In order to sustain a claim for damages for wrongful attachment of property the plaintiff must establish not only want of reasonable and probable cause but also malice in fact on the part of the person attaching the property. 12 Ind. Cas. 507; 35 M. 598; 10 M. L. T. 365 ; (1911), 2 M. W. N. 414; 21 M. L. J. 1052. (Shadi Lal, J.)

Hukam Chand *v.* Umar Din.—21 P.L.R. 1920 ; 54 I.C. 827.

——*Breach of contract of marriage—Loss of reputation—Quantum of damage.*

Held, that, in case of breaking betrothal contract of his sister the brother is liable to pay damages both for actual expenses and loss of reputation. In actual expenses is included the money paid in cash to the bride's relation who is a party to the contract as well as other expenses properly incurred in connection with the betrothal. (Chevis, J.)

Ram Rakha *v.* Atma Ram.—181 P.L.R. 1912; 232 P.W.R. 1912; 16 I.C. 851.

——*Cause of action—Injunction—Malice.*

A suit is maintainable against a party who obtained without sufficient ground a temporary injunction which caused loss to the party against whom injunction was obtained. Proof of malice is not necessary. (Abdul Raoof and Abdul Qadir, JJ.)

L. Evans *v* Arthur Minck —45 P.L.R. 1922; 1922 Lah. 393.

DAMAGES.

——*Measure of—Compensation for assault—Costs incurred in prosecuting assailant.*

Held, that a plaintiff in claiming damages for a criminal assault is not entitled to include in his claim costs incurred by him in successfully prosecuting the defendant for the hurt caused to the plaintiff by the defendant. (Chevis and Shadi Lal, JJ.)

Jagan Nath *v.* Hakim.—17 P.R. 1916; 176 P.L.R. 1915; 117 P.W.R. 1915; 30 I.C. 485.

——*Measure of—Negligence—Injury to person—Test for ascertaining amount awardable as damages*

Where a person has suffered personal injuries on account of the negligence of another he is entitled to damages for personal suffering, and for loss of enjoyment of life and also to actual pecuniary loss resulting to, and the expenses reasonably incurred by him. If he is engaged in a profession or trade or other occupation he must be compensated for the probable future loss by reason of incapacity to work.

In assessing damages arising from the probable loss or failure of income the plaintiffs average earnings form the natural basis. 28 L.T. 735, *followed*.

The Court has to consider what the plaintiff's income would probably have been, how long that income would probably have lasted and must take into consideration all the other contingencies to which the profession, trade or other occupation in which he is engaged is liable. 41 L.T. 121, *followed*.

The law does not require the Court to give the injured party the value of an annuity for the same amount as his average income for the rest of his life. (Shadi Lal and Martineau, JJ.)

Sri Ram *v.* Delhi Electric Tram Ways and Co., Ltd.—75 P.R. 1919; 13 P.W.R. 1919 ; 49 I.C. 435.

— *Measure of—Principle—Breach of contract of marriage.*

In assessing general damages in the case of a breach of a betrothal contract the Court will not take into consideration the amount which the plaintiff may have to pay if he wishes to secure another woman as his wife. But something must be awarded for the annoyance which the breach of the contract has caused him and also for possible loss of reputation and injury to feelings. (Rattigan and Beadon, JJ.)

Budhu Mal *v.* Mansha Ram.—86 P.L.R. 1914; 42 P.W.R. 1914; 22 I.C. 644.

DECLARATION.

——*Discretion of Court—Futile decree, if will be granted.*

Courts should not grant a declaratory decree which may be futile and which in any event cannot ensure the right of plaintiff to succeed to the property in suit. (Rattigan and Chevis, JJ.)

Tawakal Shah *v.* Jiwa Shah.—129 P.L.R. 1913 ; 56 P.W.R. 1913 ; 18 I.C. 511.

DECLARATORY SUIT.

—— *Adoption—Will—Suit to set aside will reciting aodption—Will revoked —Suit still maintained.*

In a suit brought by reversioners for a declaration that a registered will executed by a living childless male proprietor would not affect their reversionary rights, one of the reli-fs sought was also for the declaration of invalidity of an adoption made by the testator and recited in the will.

The Lower Appellate Court dismissed the suit as the testator revoked the will, but it did not go into the question of adoption. On appeal *held* by the Chief Court that the Lower Appellate Court should have enquired into the question of adoption. The recitals in the will were obviously intended to create evidence of adoption and the fact that the testator revoked the will does not affect the fact that he had stated that he had made an adoption.

Suit remanded under section 562 C. P. C. as the appeal was decreed on a preliminary point. (Clark, C. J. and Reid, J.)

Kahna *v.* Sundar Singh.—61 P.L.R. 1909 ; 81 P.W.R. 1909 ; 4 I.C. 482.

—— *Claim for declaring that defendant was not pregnant at her husband's death etc., not maintainable—Pleaders fee.*

Where N sued for a declaration to the effect that B, his aunt, is not pregnant and was not pregnant at the time of her late husband's death, and the suit was valued for jurisdictional purposes at Rs. 5,500 :— *Held*, that the suit is of purely a speculative nature and the Courts should refuse to exercise their discretionary power of relief in favour of persons who bring suits of this description. *Held*, also, that where a plaint in a declaratory suit like the above has been rejected, it is not proper to allow pleader's fee on the jurisdictional value. (Rattigan, J.)

Sardar Narain Singh *v. Mst.* Basant Kaur.—124 P.W.R. 1908.

—— *Plaint—Rejection of—*

The Court is not competent to reject a plaint in which the plaintiffs sue for a declaration of their right to the land in suit without going into the question of possession of the plaintiffs and other merits of the cause. (Ryves, J.)

Maluk Singh *v.* Dasaundha Singh.—93 P.R. 1910; 129 and 186 P.L.R. 1910; 128 P.W.R. 1910; 8 I.C. 353.

—— *Declaration that plaintiff's were Rajputs—Cause of action.*

The defendant made a statement before the revenue authorities wherein they stated that the plaintiffs were Sheikhs and as such not entitled to various rights in the village to which Rajputs alone were entitled. They added that if plaintiffs considered that they were legally entitled to these rights it was open to them to bring a suit in the Civil Court to enforce them.

The plaintiffs brought a suit for a declaration that they were Rajputs of the specified *got* and for other relief. The Divisional Court dismissed the suit on the ground that a suit for the declaration

DECLARATORY SUIT.

asked for did not lie as no cause of action had arisen in their favour.

Held, that the judgment of the Divisional Court was wrong and the suit was maintainable for the statement made by the defendants gave a cause of action to the plaintiffs. (Robertson and Rattigan, JJ.)

Tasadduq Hussain Khan *v.* Wazir Ali Khan.—9 P.L.R. 1906.

— *Suit for a declaration that plaintiff belonged to the Mughal tribe.*

Held, that the plaintiff's claim for a declaration that they belonged to the Mughal tribe and not to the Miana tribe, as shown in the Revenue Records, was maintainable and the plaintiffs were entitled to the declaration, for in the *Shajra nasab* of 1860, their ancestor was shown as Miana Mughal and the entry was not rebutted by any evidence. (Shah Din, J.)

Muhammad Azim *v.* The Secretary of State.—89 P.L.R. 1910; 8 I.C. 248.

DECREE.

— *Amendment of—Powers of executing Court.*

An executing Court has as such no power to amend decrees, even to bring them in conformity with the judgment of the original Court. (Chevis, J.)

Uttam Chand *v.* Balla Mal.—60 I.C. 345.

— *Based as void mortgage—When can be challenged.*

Held, that the parties by compromise should creat a fresh mortgage by which the terms of the original mortgage are extended or modified and the compromise and decree might involve even a transfer of possession to the mortgagee *as mortgagee*. But where neither on the mortgage covenant, nor on the compromise ; is the mortgagee as such entitled to possession, a decree awarding him possession if he ever gets it, as full owner cannot be regarded as creating a firesh mortgage. (Le Rossignol, Broadway and Wilberforce, JJ.)

Karori Mal *v.* Ramji Lal.—2 Lah. 53; 3 Lah. L.J. 68; 41 P.W.R. 1921.

— *Construction of—Aulad—Meaning of—*

Where the words in the compromise were *'uski aulad jo hogi wo sab malik hogi'* the word "*aulad*" is used in its generic sense and includes male and female children. 114 P. R. 1900; is a better guidance for the interpretation of the words "aulad" than 89 P. R. 1889. (Le Rossignol and Abdul Qadir, JJ.)

Saidan *v.* Fazal.—1922 Lah. 215.

— *Construction of—Boundries and area—Conflict between—Land found to be of less area.*

The primary canon of interpretation, where there is conflict between the descriptions of the boundries and of the quantity, of land conveyed is that the description of the boundaries, if precise and accurate dominates the description of the quantity. (Campbell, J.)

Narain Das *v.* Jowahar Singh.—50 P.L.R. 1922.

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——*Construction of—Conditional decree—What is.*

Plaintiffs sued to recover from the defendant possession of the property in dispute which had previously been decreed to him in accordance with a compromise which was to the effect: "that the defendant should remain in possession for three years, that he should pay four annas a month to the plaintiffs and perform service, that if he failed to pay or render service the plaintiffs would be entitled to take possession before the expiry of the three years, otherwise the plaintiffs could obtain possession by execution of the decree."

Held, that the decree was not a conditional decree but an absolute one, that the remedy of the plaintiffs was by execution of the decree obtained by them and that the suit was consequently barred.

Held, also that even if the decree be regarded as conditional the plaintiffs can sue on the original cause of action and not on the decree. 93 P.R. 1879, (F.B); 57 P.R. 1883; 16 P.R. 1893; 100 P.R. 1909, *referred to*.

Held, further, that a conditional decree is one in which it is provided that the decree-holder will be entitled to the relief granted only on the condition of his doing something. The simplest example of such a decree is one granting possession of property on payment of a certain sum of money. (Petman, J.)

Kanshi Ram *v.* Tagra.—153 P.R. 1919; 2 Lah. L. J. 125; 52 I.C. 165.

——*Construction of—Gift—Creation of further interests after the first donee.*

Where an estate is given in terms of absolute estate to a donee and further interests are created to take effect after the first donee's interest terminates, the further interests do not cut down the interest of the first donee. A gift to one person when followed by another gift to another of what may not be required by the first, the latter gift is void for uncertainty. (Broadway and Abdul Raoof, JJ.)

Mohan Lal *v.* Niranjan Das.—60 I.C. 619.

—— *Construction of—Instalment decree—Default—Money payable at once—Limitation.*

Where a decree for money payable by instalments contained a provision that if any one instalment was not duly paid, the decree-holder should be entitled to recover forthwith the whole amount remaining due under the decree. *Held*, that the decree holder had the option of taking advantage of any default, and was entitled to execute his decree for any of the instalments not barred by limitation and was not bound to apply for execution of the whole decree within three years from the date of the first default. (Reid, C.J.)

Kishen Chand *v.* Gopal Singh.—6 P.R. 1913; 172 P.L.R. 1912; 271 P.W.R. 1912; 16 I.C. 842.

—— *Construction of—Instalment decree—Possession to be given in case of default.*

Where under the terms of a decree the decree-holder was to be put in possession of a certain land on default of paying the whole

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or part of any instalment, *held*, that the option under the decree to apply for delivery of possession was not limited to the first default, but can be exercised on the occurrence of any subsequent default. (Le Rossignol and Martineau, JJ.)

Har Gopal *v.* Ram Rachhpal.—2 Lah. 155; 63 I.C. 664.

——*Construction of—Payment by instalments—Whole payable on default.*

Under an instalment decree the amount decreed was payable by monthly instalments of Rs. 2,500 commencing from the 1st of Jan. 1916 and if any two of the instalments were not paid as prescribed the decree-holder was entitled to recover the whole amount remaining due at the time of default. The judgment debtor made default in the payment of the instalment of a certain month and paid it along with the instalment of the following month on the 11th of that month.

Held, that the decree-holder was entitled to execute the decree for the whole of the remaining amount, there having been default in paying two instalments. (Scott Smith, J.)

Abdul Rahman *v.* Sitgahudlah.—45 P.W.R. 1917 ; 38 I.C. 788.

——*Construction of—Note in mortgage decree that plaintiff entitled to possession—Execution to be allowed.*

Where the Court passes a decree for money to be realized by sale of mortgaged property and possession of the property is not decreed, but it is noted that the plaintiff shall be competent to enter possession of the mortgaged property and to retain possession thereof till such time as the sale thereof takes placed and is finally confirmed by the court, the decree-holder is not entitled to obtain possession by executing the decree, though he may have a cause of action to sue for possession of the property. (Scott Smith, J.)

Rustomji *v.* Guranditamal.—8 P.L.R. 1915 ; 33 P.W.R. 1915 ; 27 I.C. 637.

——*Construction of—Vagueness—Construction against law and Equity.*

Where the judgment admits of two meanings, it is wrong to construe it in a way which violates both law and equity. (Chevis, J.)

Uttam Chand *v.* Balla Mal.—60 I.C. 345.

——*Execution—Attachment, objection against—Decree against estate of deceased debtor represented by defendant as his adopted son—Adoption subsequently negatived—Family debt—*

Held, that, a decree obtained against a debtor or his legal representative for an ordinary debt incurred in family affairs takes precedence of the debtor's widow's right to residence in the family house left by the debtor (her husband.)

Held, also, that where property attached in execution of a decree is released on a person's objection under section 278 Civil Procedure Code, 1882, it is open to the decree-holder to reduce his

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claim under the decree to any extent he likes in order to make his suit under section 283 of the said Code cognizable by a Court of a certain grade ; (provided the market value of the property in dispute does not exceed its pecuniary jurisdiction in the case in which the judgment-debtor resists the objector's claim and sides with the decree-holder.)

Held, further, that where a creditor obtains a decree for the debt due against a person whom he believes to be the legal representative of his deceased debtor, the real representative of the deceased, who has taken no step to get the decree set aside within proper time is, afterwards, incompetent to question its validity.

There is no need for a positive finding as to the nature of the debt were no contrary allegation is made. 36 P.R. 1907 ; 118 P.W.R. 1907, *followed*. (Johnstone, J.)

Mst Bhagwanti *v.* Messrs. Macdonald and Co.—150 P.L.R. 1909 ; 152 P.W.R. 1909 ; 4 I.C. 1013.

——*Execution—Death of decree-holder.*

A person who has obtained certificate of succession in respect to a decretal debt due to a deceased decree-holder is entitled to receive from Court the amount realized by execution. He cannot be ordered by execution Court to furnish security to refund the amount realized, if required to do so on the ground that an application is pending in Court to cancel or withdraw the certificate. (Rattigan, J.)

Hira Lal *v.* Pindi Sahai.—126 P.L.R. 1904.

——*Execution—Insolvency proceedings—Arrest of judgment-debtor pending adjudication of application for insolvency.*

There is nothing in the Code of Civil Procedure, nor in the Act III of 1907, which lays down that during the pendency of insolvency proceedings, before the judgment-debtor is declared an insolvent, the executing Court is not competent to order his arrest. (Scott Smith, J.)

Kishen Chand *v.* E. D. Sasson and Co.—81 P.L.R. 1910 ; 83 P.W.R. 1910 ; 7 I.C. 351.

——*Execution—Interpretation of, with reference to judgment—Duty of execution Court—Court not competent to refer to compromise and deed on which suit is based—Amendment of decree.*

It is only in the case of some ambiguity on the face of a decree that the judgment may be looked at by the execution Court for the correct interpretation of the decree. If it does not agree with the judgment, it can be amended under section 206 of the Civil Procedure Code and it is open to the decree-holder at any time to apply for such amendment.

The execution Court is not competent to refer to the terms of a compromise arrived at in a suit on a mortgage or of the mortgage-deed to interpret the decree passed in the suit. (Chitty, J.)

Gurmukh Singh *v.* Sohan Lal.—167 P.L.R. 1906.

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— *Execution—Power of executing Court to go behind decree.*

The plaintiffs obtained a decree for possession of certain specified plots of *shamilat* land amounting to about 3 *kanals* and 13 *marlas*.

The defendants subsequently sued for partition of the whole of the *shamilat* but their suit was dismissed. They also failed to get the decree in respect of the specified fields set aside. It was found that the defendants had in their possession only 1 *kanal* 3 *marlas* more than their share. The lower Courts refused to execute the decree on the ground that the decree-holders were not entitled to the possession of the land claimed by them. *Held*, that the Courts were bound to execute the decree and could not go behind it in the execution department. (Le Rossignol, J.)

Harnam Singh *v.* Bhagwan Singh —85 P.L.R. 1916; 163 P.W.R. 1916; 35 I.C. 867.

— *Execution—Stay of execution—Application to Court executing decree —Duty of Court.*

Held, that on good ground being shown an executing Court should not refuse to grant to the judgment-debtor reasonable time for obtaining from the Higher Court an order for stay of execution. (Shah Din, J.)

Bhan Singh *v.* Hukam Singh.—52 P.L.R. 1909 ; 63 P.W.R. 1909 ; 4 I.C. 552.

— *Execution—Surety bond forfeiture of—Personal attendance of party—Service of summons.*

The court declared the bond of the surities which they had given for the appearance in court of the judgment-debtor to be forfeited. It appeared that no order had been passed for the personal appearance of the judgment-debtor but on the application of the plaintiff he was summoned to appear in court to give evidence. This summons was not served on him, the summons was to be sent through his pleader but the pleader's agent returned it saying that he did not know where judgment debtor was. *Held*, that the order directing forefeiture of the bond must be set aside for no order was passed for personal attendance of the judgment-debtor.

Obiter dictum.—That the summons could not be said to have been served on the judgment debtor under the circumstances of the case. (Scott Smith, J)

Mula Shah *v.* Harbhagwan.—90 P.L.R. 1916 ; 166 P.W.R. 1916 ; 36 I.C. 73.

— *Execution—Surety. Liability of—Bond for apparance of judgment debtor.*

The judgment-debtor came up in Court and his property was to be attached when the petitioner offered to give security that the judgment-debtor would appear in Court at the next hearing of the case, if time were allowed for him to make some arrangement to satisfy the decree. In the bond that he executed and filed in Court he simply stated that the petitioner would present the judgment-debtor in Court. There was no condition in the bond that he was

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responsible for the amount of the decree if the judgment-debtor should fail to present an application in bankruptcy. At the next hearing the judgment-debtor appeared in Court. It was contended for the decree-holder that since the judgment-debtor has made no application to be declared insolvent the petitioner had forfeited the bond and was liable to discharge the decree. *Held*, that the contention was invalid. (Johnstone, J.)

Hira *v.* Har Sarup.—186 P.L.R. 1905.

——*Execution—Surety—Security under Chief Court, Circular Order LVII, Rule 11 (i).*

Held, that under Rule 11 (i) of the Punjab Chief Court Circular Order LVII, the only security which can be demanded of a judgment-debtor, when he applies for revision of an order or decree of a Court below is for performance of the said order or decree within a reasonable time ; that this rule must be strictly construed, and obviously the liability of the person who stands surety cannot be more extensive than the liability of the judgment-debtor, no matter in what terms the security bond is worded ; and that no liability can attach to the surety unless and untill the performance of that order or decree has been rendered impossible or impracticable by any improper or illegal act of the judgment-debtor or the decree-holder has failed in his every endeavour to enforce performance of the said order or decree. (Robertson and Rattigan, JJ.)

Agia Singh *v.* Balla Mall.—134 P.L.R. 1909 ; 66 P.R. 1909 ; 99 P.W.R. 1909 ; 2 I.C. 959.

——*Execution by one of the decree-holders—Decree in favour of a Joint Hindu Family—Power of managing member to give discharge.*

Held, that the ordinary rule is that a joint decree-holder is not bound by the acts of another who has compromised or received payment from, and has given discharge to the judgment-debtor beyond the extent of his own share in the decree.

Held, also that the above rule does not apply to the case of a managing member of a joint Hindu family. 35 Cal. 561 ; 2 Mad. W.N. 420, *followed*.

But the said rule equally applies where the managing member is on the worst possible terms with the other members and the judgment-debtor's conduct has been throughout dishonestly and fraudulent and he is colluding with the former in order to defraud the other members of the family. (Rattigan, J.)

Ram Singh *v.* Nanak Chand.—60 P.L.R. 1915 ; 10 P.W.R. 1915 ; 27 I.C. 603.

——*Exparte—Setting aside—Adjournment—Costs—When to be disallowed—Date of hearing a holiday—Procedure—Appellate Court, power of, to cancel wrong order as to costs.*

When the date fixed for hearing a case happens to be a holiday, the Court is not justified in taking up the case on the following day and in passing any order to the prejudice of any of the absent parties without duly serving upon them of a fresh notice of the hearing.

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An ex parte decree without duly serving the summons upon the defendant is liable to be set aside unconditionally.

A party having good and sufficient reason for non-compliance with an order of a court cannot be burdened with the costs of adjournment.

In an appeal from the order refusing to set aside the ex parte decree passed on the second occasion, the Chief Court cancelled all the proceedings subsequent to the passing of the 1st ex parte decree including the orders allowing costs on the occasion of setting aside the ex parte decree and granting the adjournments. (Kensington, C. J. and Rattigan, J.)

Umat ul Mungi Begam *v.* Salig Ram.—126 P.L.R. 1915 ; 51 P.W.R. 1915 ; 29 I.C. 137.

——*Exparte—Setting aside—Lenient treatment of defaulting parties—Setting aside of exparte proceedings by consent.*

The defendant applied to set aside an ex-parte decree passed against him. The plaintiff agreed on condition of payment of costs and a date was fixed by the Munsiff for their payment. On that date the application was dismissed by the successor of the Munsiff, who originally heard the application, on the ground that the summons was duly served on the defendant and the order dismissing the application was upheld on appeal.

Held, that the application was wrongly rejected. The defendant should have been leniently treated specially because the plaintiff had given his consent to the grant of the application. (Johnstone, J.)

Partap Singh *v.* Narain Das.—72 P.R. 1905 ; 159 P.L.R. 1905.

——*Exparte—Setting aside—Validity of.*

An *exparte* decree is final till it is set aside by the first Court or the Appellate Court. (Le Rossignol, J.)

Abbas Khan *v.* Nurkhan.—60 I.C. 496.

——*Subject-matter.*

A decree beyond the subject-matter of the suit is illegal. (Le Rossignol, J.)

Wiru Mal *v.* Sardar Khan.—3 Lah. L. J. 424.

——*Exparte—Transfer of—Decree set aside—Maintainability of suit by transferee on original cause of action.*

The plaintiff obtained an ex-parte money-decree and transferred it to another person by an oral agreement. The transferee was brought on the record as the person entitled to execute the decree and the order bringing him on the record became final. The decree was subsequently set aside on the application of the defendants.

Held, that the transferee was entitled to prosecute a suit on the original cause of action against the defendants. 1 All. 446, *distinguished*. (Reid, J.)

Gurdit Singh *v.* Chanda Singh.—78 P.R. 1905 ; 135 P.L.R. 1905.

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—— *Validity—Decree passed without jurisdiction.*

A decree passed without jurisdiction is not a nullity but can be set aside by appeal or revision ; and till it is so set aside, it is good in spite of any defect in the jurisdiction. Plaintiff sued for accounts and valued his suit at Rs. 130. The Munsiff dismissed the suit and on appeal, the District Judge passed a preliminary decree and remanded the suit for taking accounts. The Munsiff found the amount exceeding his pecuniary jurisdiction and transferred the suit to Sub-Judge who ignored the District Judge's order and ordered a fresh trial of the suit. *Held*, that the proceedings on the valuation were not *ultra vires* that the Sub-Judge ought not to have ignored the District Judge's order but should have acted on the preliminary decree of the District Judge. (Le Rossignol, J.)

Ramji Lal *v.* Bunjan Lal.—60 I.C. 352.

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—— *Construction—Deed of Adoption—Power to widow to adopt son—Reversioner giving assent for consideration.*

One of the reversioners who had previously obtained the decree and another reversioner consented to this second deed in consideration of receiving a portion of the land left by the deceased.

Held, that the descendants of the consenting reversioners were debarred from disputing the validity of the adoption.

Documents executed in India must be construed with due regard to all the attendant circumstances of the transaction. (Rattigan, J.)

Nidhan Singh *v.* Sham Singh.—40 P.R. 1913; 24 P.L.R. 1913; 17 I.C. 524.

—— *Construction—Commercial contract—Clause in indent that disputes are to be submitted to arbitrators—Whether total non-delivery of goods is a dispute to which clause is applicable.*

Held, that where in the case of a commercial contract, the indent provides for the reference of all disputes arising out of the indent to arbitration, a total non-delivery of the goods indented for, which naturally gives or may give rise to a suit for damages, is not a dispute within the meaning, and arising out, of the indent which would render it obligatory to refer the matter to arbitration. 54 P. W. R. 1913; 18 Ind. Cas. 316, *followed*. 35 P. R. 1911; 70 P.W.R. 1911; 9 Ind. Cas. 655, *distinguished*. (Broadway, J.)

Chajju Mal *v.* Gurmukh Singh.—72 P.R. 1917 ; 139 P.W.R. 1917 ; 42 I.C. 95.

—— *Construction—Estoppel—Individual transaction—Oral evidence of—Estoppel—Pre-emption.*

Held, that, persons who by clothing their transaction in a particular form, induce a pre-emptor to come forward and claim pre-emption in respect of that transaction as a whole cannot be allowed to turn round thereafter and to claim to show by oral evidence that their real intention was something quite different from that expressed in the sale-deed. (Rattigan and Scott Smith, JJ.)

Maghi *v.* Narain.—6 P.R. 1914; 256 P.L.R. 1913; 165 P.W.R. 1913; 21 I.C. 31.

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——*Construction—Gift—Hindu family—Method of interpreting deed.*

Held, that, a deed of gift in favour of a Hindu female should be interpreted on its merits allowing no importance to the circumstance that the donee is a female ; so where a gift of immoveable property by a Hindu male owner in favour of his wife and mother stated, *inter alia*, that the executant and his heirs shall have no right in, or concern with, or claim to, the moveable and immoveable property gifted, the deed was held to be an out and out gift of his full rights and conferred upon the donees the full ownership of that property. (Johnstone and Rattigan, JJ.)

Gurmukh Singh *v.* Mukhan Singh.—147 P.W.R. 1911; 61 P.R. 1911; 11 I.C. 846.

——*Construction—Gift—Statement of donor showing gift absolute—Donation of a share in joint holding—Donee already in possession along with donor—Complete transaction.*

When the statement of the donor at the time of the mutation proceedings established that the gift was absolute and not simply for the maintenance of the donee during his lifetime.

Held, that the gift of a share of a joint holding is valid where the donee is already in joint possession along with the donor and the latter has done everything in his power to complete the transaction, and that it is not necessary to separate the gifted portion. (Shadi Lal, J.)

Hira Singh *v.* Jhanda Singh.—106 P.L.R. 1917 ; 80 P.W.R. 1917 ; 42 I.C. 371.

——*Construction—Mortgage deed—Zar-i-marhuna—Hamrah—Personal—Redemption—Interest.*

The operative part of a mortgage deed ran as follows:

'*Rihn bashrait-i-zail karte hain ke qabza kasht wa muamala Sarkar zimme murtahinan hoga. Zar-i-marhuna se chhih sau pachchas bila sud rahega. Iwaz sud zar-i-bala wa muamala Sarkar paidawar arazi murtahinan lenge. Baqi chhih sau pachchas ke* hamrah *sud bahisab ek rupia fisadi mahwari denge. Zar-i-sud salana ada hoga. Basurat adam adai sud salana sud dar sud bahisab bala denge. Kasht arazi bamarzi murtahinan muzhiran karenge .... Miad koi muqarrar nahin hai. Jab bad darau fasl bamah-i-Har khud kasht murtahinan talab karen* zar-i-marhuna *dekar zamin chhura lewenge.* Zar-i-marhuna *batafsil-i-zail ... ... wasul pai. Qabza diya gaya ... ... Nisbat sar-i-sud salana bala* hamrah *chhih sau pachchas rupia murtahinan ko ikhtiyar hoga ke sud dar sud lewen ya mushiran se ba irja-i-nalish wasul karlewen.*"

Held, (*1*) that the words *zar-i-marhunah* in the redemption clause in the above extract meant the mortgage-money without any

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reference to the interest due on it. 144 P. W. R. 1907; 6 P. L. R. 1907, *followed and approved.*

(2) that the words *hamrah chhih sau pachchas rupia* in the last clause of the above extract meant calculated or due on Rs. 650 and in the light of the context were susceptible of no other meaning. The clause was one relating to interest and compound interest, and stood by itself, having nothing whatever to do with the redemption of the land. Under the clause, the interest or compound interest was agreed to be received or recovered from the mortgagors personally.

(3) that, under the terms of the mortgage deed, as set forth in the above extract, the mortgagors were entitled to claim redemption on payment of the principle mortgage-money only, and the mortgagees had only a personal remedy against them in respect of their claim for interest or compound interest. (Kensington and Shah Din, JJ.)

Aulia Khan *v.* Kanshi Ram.—45 P.R. 1913; 145 P.L.R. 1913; 25 P.W.R. 1913; 17 I.C. 677.

——*Construction—Mortgage and lease—No parts of the same transaction—Landlord and tenant—Relationship of—Right to evict.*

Held, on a construction of two documents executed on the same date and styled one, a mortgage and the other a lease, that the fact that there was no reference to the lease in the mortgage-deed was a strong indication of the separate nature of the two transactions and all that was intended by the lease was that such money as were payable thereunder were to be given credit for by the mortgagee.

As at the time of the execution of the rent-deed, the parties clearly intended to establish the relation of landlord and tenant between themselves, the mortgagees were entitled to evict the mortgagors at any time. (Broadway, J.)

Mangia Ram *v.* Ganesh Das —161 P.W.R. 1918 ; 47 I.C. 351.

——*Construction—Partition—Family arrangement—Registration—Necessity.*

Held, that a family arrangement for the management and enjoyment of the joint property does not amount to partition.

Held, also, that a document declaring existing facts cannot be said to create or relinquish any title in immoveable property and does not require registration. (Robertson and Beadon, JJ.)

Thakar Singh *v.* Ujagar Singh.—26 P.L.R 1913 ; 8 P.W.R. 1913 ; 18 I.C. 583.

——*Construction—Principles.*

That the terms of a mortgage deed drawn up by an unskilled draftsman must not be construed too strictly.

A mere promise by a creditor, made at the request of his debtor to forbear from suing him, is regarded as a voluntary promise and is therefore of no effect. (Shah Din and Agnew, JJ.)

Chhabil Das *v.* Masu.—4 P.R. 1914 ; 243 P.L.R. 1913 ; 207 P.W.R. 1913; 145 P.W.R. 1913 ; 19 I.C. 981.

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——*Construction—Principles.*

Held, that it is a cardinal principle of interpretation of documents that in determining the nature of a transaction the document evidencing it should be considered as a whole and the intention of the parties should be gathered not from isolated sentences but from all the facts mentioned therein. (Shadi Lal and Le Rossignol, JJ.)

Gopi Ram *v.* Ram Dhan.—157 P.L.R. 1917 ; 10 P.W.R 1918 ; 44 I.C. 228.

——*Construction—Promissory note or receipt—For supply of Bricks not pro-note.*

A contract was entered into between the parties for the supply of bricks to be supplied from time to time. Each time a supply was made, a printed form, evidently used for various purposes, was sent by the plaintiff to be signed by the defendant obviously as a receipt for the bricks.

Held, that the document was not a pro-note, but a mere receipt for bricks. (Robertson, J.)

Lehna Singh *v.* Ahmad Din.—174 P.L.R. 1913; 103 P.W.R. 1913 ; 19 I.C. 436.

——*Construction—Release—Dastbardarinama—Release by widow to reversioner for consideration—Failure of consideration—Effect.*

Where a widow executed and registered a deed stylling it a *dastbardarinama*, and stated in it that she renounced all her rights as widow in the estate of her husband held by her in favour of the next male reversioner in consideration of his agreeing to pay her a certain amount which amount was never paid. *Held*, that the deed was not a sale-deed but a deed of release by which the widow surrendered her life-estate in her husband's land. *Held*, also, that since no part of the consideration for the surrender of her life-estate was paid to her by the reversioner the agreement embodied in the deed was void and unenforceable. (Johnstone, C.J. and Shah Din, J.)

Mst. Fazlan *v.* Imam-ud-Din.—70 P.R. 1915; 10 P.L.R. 1916; 95 P.W.R. 1915 ; 29 I.C. 253.

—*Construction—Sale-deed—Inclusion of share in the village shamilat—Intention of parties.*

It is a question of the intention of the parties as to whether a sale of the *khewat* lands includes the *shamilat* pertaining to the lands, a determination of which depends upon the facts and circumstances of each particular case. Where the ancestor of the plaintiffs in 1862 sold to the ancestor of the defendants his entire well with all the culturable and unculturable land attached to it, this being the only property he owned, and after selling it he migrated to and settled in another district, and the *shamilat* of the village being partitioned in 1905, the plaintiffs sued the representatives in interest of the vendees to recover that area. *Held*, that the vendor having severed all his connection with his original village and having taken no interest during all these long years in the *shamilat* area it was evident that he meant to transfer all the rights he possessed in the village to the vendees and that both the parties to the transaction intended at that

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time that the vendees should step into the shoes of the vendor. 74 P.W.R. 1910 ; 6 Ind. Cas. 1003, *distinguished.* (Shadi Lal and Le Rossignol, JJ.)

Shahamad *v.* Ibrahim.—57 P.R. 1915 ; 60 P.L.R. 1916 ; 134 P.W.R. 1915 ; 30 I.C. 100.

——*Construction—Sale—Agreement to sell—Inaccurate recital of consideration—Failure to execute regular sale deed and register the same—Effect of.*

Held, that—(1) Where a receipt of earnest money for the sale of equity of redemption of a house distinctly mentions an out and out sale as having been effected, the mere fact that it goes on to say that a sale-deed will be drawn up does not show that the sale contract is incomplete, nor is an incorrect entry of the amount of a mortgage on that property an indication of the incompleteness of the sale. (2) The fact that such a receipt is not promptly followed by the execution and registration of a formal sale deed is not sufficient to warrant a finding that the intention of the parties was that title should not pass until the consideration money had been paid in full. (Shah Din and Chevis, JJ.)

Hardit Singh *v.* Behari Lal.—9 P.L.R. 1916 ; 104 P.W.R. 1915 ; 29 I.C. 305.

——*Construction—Sale or perpetual lease—Nominal rent reserved not enforced—Pre-emption.*

A deed, whereby all the proprietary rights in certain land have been transferred in consideration of the payment of a substantial sum of money, is in reality a deed of sale, although it purports to be only a perpetual lease creating occupancy rights in the transferee and although a small amount of *malikana* has been nominally reserved by the deed as being payable by the so called lessee to the so called lessor. 7 Ind. Cas. 930 ; 33 A. 104 ; 7 A.L.J. 1022, *relied upon.* 136 P.R. 1907, *distinguished.* (Shah Din and Chevis, JJ.)

Amar Singh *v.* Sadhu Singh.—187 P.L.R. 1914 ; 115 P.W.R. 1914 ; 23 I.C. 970.

——*Construction—Sale or mortgage.*

A mortgaged a building site to the nephew of her husband. The site was situated in a town in the heart of a flourshing canal colony where such property was likely in future to increase in value. The mortgage-money was not higher than the market-value of the site. The term of the mortgage was fifteen years. No interest was chargeable on the mortgage-money proper but the mortgagee was entitled to build on the site at will and to charge the expenditure, with 6 per cent. per annum interest, on the house ;

Held, that these circumstances were insufficient to prove that the transaction between the parties was a sale and not a mortgage. (Johnstone and Rattigan, JJ.)

Megha Ram *v.* Makhan Lal.—126 P.L.R. 1912 ; 67 P.R. 1912 ; 255 P.W.R. 1912 ; 13 I.C. 667.

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——*Construction—Sale and separate agreement for reconveyance—Effect—Question arising between vendee and pre-emptor—Question arising between vendor and vendee—Distinction.*

On 18th July 1911 plaintiff, *Mst* N. B. purchased a stamp paper which was endorsed by the stamp vendor as required for a deed of conditional sale. On 14th July a deed of sale was executed on the paper by *Mst.* N. B. in favour of M. H. a relative of hers. The deed contained a distinct stipulation that the sale was an out and out one and that there is no agreement to reconvey the property. On 16th July this deed was registered and on the same day the vendee purchased another stamp paper on which he executed an agreement to reconvey the property sold by the deed of 14th idem provided *Mst.* N. B. repaid the puchase money, etc. This agreement to reconvey was registered on the 17th July 1911. On 6th July 1912 one F.H. instituted a suit for pre-emption and on 12th idem *Mst.* N. B. sued for possession on terms of the agreement of 15th July 1911.

Held, that as between the pre-emptor and *Mst.* N. B. the transaction embodied in the deed of 14th July 1911 was an out and out sale and no oral evidence of a contemporaneous oral agreement varying the terms of the sale deed was admissible and that the latter's suit must consequently be dismissed. 22 I.C. 12 All. 387 (P.C.) 3 All. 369 (F B.) and 22 All. 149 (P.C.) *distinguished.*

Semble, that if the litigation had been solely between the vendor and the vendee the Court might have held that the two transactions taken together amounted merely to a conditional sale or to an English mortgage. (Scott Smith and Le Rossignol, JJ.)

Mahomed Mir *v.* Faizal Hassan.—74 P.R. 1918 ; 163 P.W.R. 1918 ; 47 I.C. 418.

——*Construction—Surety bond—Strict construction—Surety till disposal of appeal—Case remanded—Suretyship if determines.*

Surety bonds must be construed strictly, and a surety cannot be held liable beyond the extent to which he has contracted. The Respondents stood sureties for the judgment-debtors till the decision of an appeal then pending in the District Court. On the decision of the appeal the case went back to the trial Court and the decree-holders wanted to arrest the judgment-debtors. The respondents agreed to extend their suretyship till the date fixed. There was an order of the court that time was allowed up to 2nd January 1914 for compromise. This was followed by a further order " if the judgment-debtors want to be made insolvents they can have up to 19th January 1914." The judgment-debtors appealed to the Chief Court which sent for the records, and there was no hearing on either the 2nd or 19th January. The Chief Court rejected the appeal and the case went back to the first Court and the judgment-debtors having absconded the decree-holders sought to realise the decree from the surities.

Held, that the sureties undertook nothing more than to produce the judgment-debtors on the date fixed for the next hearing, *i.e.*, 19th January 1914, and therefore, they were not liable for the

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production of the judgment-debtors at a date nearly two years later. (Chevis, J.)

Thakar Das *v.* Sham Das.—15 P.W R. 1919 ; 49 I.C. 438.

— *Construction—Words* al aulad—*Meaning of*—

Held, that, the words al aulad means offspring of any kind, and include all descendants male or female whether through the male or female line. (Robertson and Rattigan, JJ.)

Mst. Chandni *v.* Thulla Singh.—76 P.R. 1912 ; 161 P.L.R. 1912 ; 141 P.W.R. 1912 ; 14 I.C. 523.

— *Construction "Tarha of a widow", meaning of.*

The words "Tarha of a widow" without any further details used in the deed of conveyance executed by the reversioner of her husband in favour of another is intended to mean the moveable and immoveable property which was in her possession at the time of her death and does not include incorporeal rights in the immoveable property which she had already sold during her life-time.

It is a cardinal canon of the interpretation of deeds that the Court should endeavour to gather the intention of the parties to it from the language of the document taken as a whole and from all the surrounding circumstances. (Shadi Lal and Broadway, JJ.)

Jai Ram Singh *v.* Sukh Dial.—10 P.W.R. 1917; 39 I.C. 436.

— *Execution—Proof of—Suspicious circumstances.*

Held, that, a document is suspicious which purports to have been executed a year before the purchase of stamp and only scribe has been called to prove it. (Shah Din, J.)

Ganesh Lal *v* Dewa Singh —138 P.W.R. 1912 ; 16 I.C. 684.

DEFAMATION.

See (1) PENAL CODE, S. 499, and (2) TORT.

DEFENCE OF INDIA RULES.

— *R. 25—Cognizance of offence on the police Report—Complaint—Necessity for.*

All District Magistrates in the Punjab were empowered by notification dated 22nd April 1919, to order or authorise complaints to be made in respect of such offences as came within the purview of R. 25 (1) committed within their jurisdiction. Where the District Magistrate of Jullundur directed the Superintendent of Police to make enquiry, complete the case and send it up for trial and in due course the police put up a challan before the District Magistrate and the case was sent to the trying Magistrate who disposed of it. *Held*, that the so called challan by the police must be regarded as a complaint and that the Magistrate was properly seized of the case. 16 P.R. 1890 ; 28 P.R. 1883; 2 P.R. 1892 ; 3 P.R. 1892, *distinguished.* (Broadway, J.)

Khushal Singh *v.* Emperor.—67 I.C. 337.

DIVORCE.

— *Adultry—On the part of wife—Proof—Birth of child 330—333 days after the date of last access—Legitimacy—Evidence Act, S. 112.*

Where the husband charged his wife with having committed adultery and prayed for dissolution of marriage and where the charge

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of adultery rested on the bare fact that she gave birth to child 330 days or 333 days after the date when petitioner had last access to her.

Held, that, though, under the circumstances, very considerable doubt is thrown upon the honesty and truth of the wife's assertion that the petitioner was the father of the child, Courts are not justified, in the absence of any other evidence, holding that child is not the child of the petitioner, and that, under S. 112, Evidence Act, Courts are bound to assume that the child is legitimate, unless it is proved that it could not have been begotten of him. (Reid, C. J. and Rattigan and Chevis, JJ.)

P. *v.* P.—77 P.R. 1911 ; 260 P.W.R. 1911 ; 12 I.C. 946.

—*Custom—Khatiks—Low class—Sudras—Hindu Law.*

Held, that as Khatiks are low class Sudras they do not follow strict Hindu Law, consequently there appears no prohibition among them of divorcing a wife by a written deed. (Johnstone, J.)

Bholar *v.* Emperor.—181 P.L.R. 1914; 31 P.W.R. 1914 Cr.; 24 I.C. 947.

DIVORCE ACT, (IV OF 1869), S. 3.

—*Adultery—Petitioner, guilty of—Discretion to pass decree.*

Where the petitioner was guilty of adultery during marriage, S. 14, Indian Divorce Act, gives the Court a discretion to pass a decree in spite of such adultery, and the Court will be bound by the rules which bind the English Court under the English Divorce Act.

Adultery by the petitioner is, except under very peculiar circumstances, a bar to a decree. (Reid, C. J. Kensington and Rattigan, JJ.)

M. *v.* M.—70 P.R. 1911 ; 239 P.W.R. 1911 ; 12 I.C. 960.

—S. *3 (1)—Jurisdiction—Suit for dissolution of marriage—Parties residing within jurisdiction but separately—"Reside or last resided together—Punctuation—Interference from—English Law.*

Held, that the Chief Court has jurisdiction to entertain a petition for divorce where the parties at the date of filing the petition, reside within the jurisdiction of the Court though they reside separately. Durand v. Durand 14 S. W. R. 416; Wingrove v. Wingrove. 14 S. W. R. 416, *followed.*

Per Reid, C. J. and Kensington, J.—The word "together" in section 3 (1) of the Divorce Act must be read with "last resided" only. Had the intention of the Legislature been to make "together" apply to "reside" also, there would have been a comma after "reside" and after "resided '.

Per Rattigan, J.—

Legal documents in strictness should not be punctuated and this rule applies equally to Acts of the Legislature.

Jurisdiction to grant dissolution of marriage ordinarily depends upon the domicile of the parties, but Legislature of this country has made it depend on residence alone. It is doubtful whether the intention of the Legislature was not to require something in the nature of a "matrimonial house" as a substitute for domicile.

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DIVORCE ACT, (IV OF 1869), Ss. 3, 7, 10, 51 and 52.

In England, Courts previously assumed jurisdiction to dissolve a marriage if the "matrimonial home" of the parties was in England. As the law now stands, the English Courts have no jurisdiction in such cases, even though the matrimonial home is in England unless the parties are domiciled in England. Le Mesurier v. Le Mesurier, (1195) A. C. 517 ; 64 L. J. P. C. 97 ; 11 R. 527 ; 72 L. T. 873; Niboyet v. Niboyet 4 P. D. C. A. 1; 48 L. J. P. 1; 39 L. T. 486; 27 S. W. R. 203.

Henrietta Alexandra Gale *v.* James Frank Honduras Gale.—47 P.R. 1911 ; 171 P.L.R. 1911 ; 122 P.W.R. 1911 ; 10 I.C. 487.

——*Ss. 3 (1), (2) and (3) and 10—District Court, jurisdiction of—Where husband and wife reside or last resided.*

Where in an application for dissolution of marriage it appeared that the petitioner and his wife last lived and cohabited together at Bangalore, that the respondent did not reside and had not for many years resided, within the Amballa District and that at the time of the institution of proceedings she was not residing at any place within the Punjab.

Held, that having regard to the definitions of the terms "High Court," "District Judge" and "District Court" in section 3 of the Divorce Act, the District Judge of Amballa had no jurisdiction to try and determine the case. (Rattigan, Scott Smith and Le Rossignol, JJ)

Morton *v.* Morton.—76 P.R. 1916 ; 139 P.L.R. 1916; 122 P.W.R. 1916; 35 I.C. 367 (S.B.)

——*S. 3 (3)—Judicial separation—Jurisdiction of Court—"Last resided" —Evidence—Uncorroborated testimony of wife.*

On appeal against a decree granting judicial separation passed by the Divisional Judge of Lahore on the application of the wife, it was contended that the Court had no jurisdiction to entertain the application. It appeared that the home of the appellant, the husband, was at Lahore, where he lived till 1898, when he went to Africa for employment. He returned to Lahore after 2 years on a few months' leave for the purpose of getting married. Having rented a house he took his wife to this house immediately after marriage, spent one or two days there and returned to Africa with his wife. He again left Africa for India after about a year's residence, spent two or three weeks with his wife at her parents' house at Sharanpur, left her there and never lived with her again. *Held*, that the objection had no force and the Lahore Court had jurisdiction.

The Court would not accept the uncorroborated testimony of the wife, that her husband had committed or attempted to commit an unnatural offence on her person. (Reid, J.)

A. *v.* A.—77 P.R. 1905; 161 P.L.R. 1905.

——*Ss. 7, 51 and 52—Parties not compellable witnesses.*

In a suit for dissolution of marriage under the Divorce Act on the ground of adultery by the wife, the respondent and

DIVORCE ACT, (IV OF 1869,) S. 10.

co-respondent are competent witnesses only in the sense that if they offer themselves as provided by Section 51 of the Divorce Act, they may be examined like any other witnesses, but cannot be compelled to give evidence unless they offer themselves as witnesses.

The rule applicable to compulsory oral evidence is applicable to compulsory disclosure of documents. The petitioner is not entitled to any information from the co-respondent as to the acts of adultery charged until such time as the co-respondent offers himself as a witness. The co-respondent cannot be compelled to file an affidavit declaring what letters from the respondent are in his possession, but affidavit may be required in respect of letters written by the petitioner to the co-respondent.

A list of documents proving adultery should be filed with the plaint, and when it is not done the petitioner may be ordered to file an affidavit disclosing all letters in his possession or power relating to the adultery charged on which he relies. (Reid, J.)

C. *v.* C. B.—11 P.R. 1902.

——*S. 10—Adultery—Proof—Correspondence between parties.*

In a suit for dissolution of marriage the Court may presume adultery if it is satisfied that guilty attachment subsisted between the parties and that they had opportunities to have guilty intercourse. The direct fact of adultery need not be proved. In a divorce case, the correspondence between the respondent and the co-respondent is very important evidence. (Broadway and Abdul Raoof, JJ.)

Davidson *v.* Davidson.—62 I.C. 782.

——*S. 10—Petition for divorce not consented—Necessity for judicial enquiry by Court before passing decree.*

A decree for dissolution of marriage cannot be legally granted merely on the ground that the respondent does not oppose the petition.

The Court must satisfy itself that there was good reason for the delay, if any has occurred, in suing; that there was no connivance and that there has been no condonation. (Le Rossignol, Broadway and Martineu, JJ.)

Lehna Mal Sadik *v. Mst.* Hakim Bibi.—25 P.R 1919; 71 P.L R. 1919; 51 I.C. 235. (B. F.)

——*S. 10—Jurisdiction to entertain petition for dissolution of marriage—Parties domiciled in England.*

In a petition by wife for dissolution of marriage under Section 10 Act IV of 1869 Indian Divorce Act where both the parties were domiciled in England. *Held*, by *Clark, C. J.* and *Reid, J.* (Robertson, J., *dissenting*) that the words 'resides in India' used in section 2 of Act IV of 1869 (Indian Divorce Act), cannot be interpreted to mean domiciled in India and the Courts in India are not debarred from entertaining petitions for dissolution of marriages when both the parties are domiciled in England. I. L. R. 10 Bom. 422, *followed*.

The Chief Court declined to pass a decree for dissolution of marriage on the uncorroborated statement of the petitioner

DIVORCE ACT, (IV OF 1869), Ss. 17, 18, 43, 55 and 57.

holding that a Court will not act upon the uncorroborated evidence of a party to a matrimonial action. Decree for judicial separation was granted on proof of cruelty. (Clark, C. J. Reid and Robertson, JJ.)

Mary Alice Warwick *v.* Charles Spencer Warwick.—p. 488 P.L.R. 1900; 64 P.R. 1900.

——*S. 17—Decree for dissolution of marriage—Confirmation—Notice to respondent.*

No notice to the respondent is necessary in proceedings for confirmation of a decree for dissolution of marriage. (Le Rossignol and Abdul Raoof, JJ.)

Ethel Mabel Emily Harris *v.* C. P. Harris.—10 P.L.R 1921; 19 P.W.R. 1921; 59 I.C. 89.

——*Ss. 18 and 57—Marriage contracted within six months of confirmation of decree of dissolution of former marriage—First husband living—Maintenance and custody of child of the marriage.*

The terms of section 57 of the Divorce Act are imperative, and there is no alternative to passing a decree of nullity where the marriage is effected within six months of the confirmation of a decree of dissolution of a former marriage of either party, and the former husband or wife, as the case may be, is living at the time of the latter marriage.

Application for custody and maintenance of the child of the marriage must be by separate petition. (Reid, C.J. and Kensington, J.)

Betteridge *v.* Curry.—29 P. R. 1913; 222 P. L. R. 1913; 19 I. C. 778.

——*S. 43—Decree* nisi *for dissolution of marriage—Orders as to custody, maintenance and education of children should not form part of such decree.*

Held, that the order under section 43 of the Indian Divorce Act as to custody, maintenance and education of children should not have formed part of the decree *nisi* for dissolution of marriage. These were merely *ad interim* orders liable to terminate upon the confirmation of the decree by the High Court. 62 P. R. 1887, *relied on.* (Rattigan, C.J. Broadway and Martineau, JJ.)

In the matter of the Indian Divorce Act.—142 P.R. 1919; 2 Lah.L.J. 39; 54 I.C. 943.

——*S. 55—Suit for judicial separation on the ground of adultery and cruelty—Charge of adultery held not proved and petition granted on the ground of cruelty—Appeal against findings by party in whose favour the decree is passed—Civil Procedure Code, (Act XIV of 1882), Section 540.*

The wife instituted proceedings against her husband for a judicial separation on the ground of his adultery with a certain person. During the course of the trial the petition was amended by adding a charge of cruelty. A decree for judicial separation on the ground of adultery was granted, the Court finding against the wife on the issue as to adultery. On appeal by her to set aside the finding as to adultery—

DIVORCE ACT, (IV OF 1869), S. 55.

Held, that the appeal did not lie.—6 Cal. 206 and 319 (F. B.) ; 6 W. R. 18 (*Misc.*); 7 All. 606; 21 All. 117; 18 Cal. 647; 11 Cal. 301 (P. C.) ; 35 L. J. P. and M. 104 ; 43 L. J. P. and D. 6; 1 S and T. 168; 28 L J. P. 55; 37 L. J. P. 77, *referred to.* (Reid, J.)

Grace Hannah Wingrove *v.* Arthur Clement Wingrove.—84 P.L.R. 1904; 56 P.R. 1904.

—— *S. 55—Punjab Courts Act (XVIII of 1884), S. 9—Appeal—Decrees and Orders under Divorce Act.*

Under section 55 of the Indian Divorce Act, read with section 9 of the Punjab Courts Act, an appeal lies against a decree or order passed by a Single Bench of the Chief Court trying a case under the Indian Divorce Act. (Clark, C. J. and Robertson, J.).

C. *v.* C. and B.—18 P. R. 1903.

DOCUMENT.

—— *Construction of—Partnership deed.*

Though the mere use of the term partnership in a loose and inaccurate manner in a deed would not necessarily be conclusive that the relations between the parties were such as to have the legal effects of a partnership, still the use of such expression in a formal deed is strongly indicative of the intentions of the parties regarding their mutual relations.

The Court found upon construction of the deed in suit and the conduct of the defendant that he occupied the position as one of the partners and not as one engaged to lend money for business. (Anderson and Robertson, JJ.)

Sham Sunder *v.* Ibrahim.—58 P.L.R. 1904.

—— *Registered document withheld by executant*

The Divisional Judge dismissed the plaintiff's suit based on a mortgage-deed on the ground that though the defendants had presented the deed at registration and admitted its execution they had not *delivered* it to the plaintiff on receiving it back from the registration office and that the transaction was therefore incomplete. It was found that the defendants had received full consideration and no fraud was committed on them.

Held, that the view of the law taken by the Divisional Judge was erroneous. Delivery of the deed was not legally necessary to complete the transaction. 5 B. & C., 632, *followed.* (Johnstone and Rattigan, JJ.)

Kanshi Ram *v.* Tota Ram.—40 P. R. 1906 ; 78 P. L. R. 1907 ; 61 P. W. R. 1906.

EASEMENT.

—— *Apparent and continuous—Drainage—Rights of way—Obstruction—Injunction—Damages—Laches.*

In a case, when the Court found that the effect of the obstruction to the flow of roof and refuse water seriously diminished the value of the plaintiff's premises and his comfort in the enjoyment of them, and rendered them unfit for habitation, an injunction was properly granted as pecuniary compensation would not afford adequate relief.

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The plaintiff was found not guilty of laches.

Held, also, that right to drainage was an apparent and continuous easement, it was exercised when the premises were owned jointly by the predecessors in interest of the parties, and it passed to the plaintiff.

Limited right of way for supervising the drainage allowed to the plaintiff. (Reid and Walker, JJ.)

Sultani *v.* Ramsaran Das.—49 P.R. 1900; p. 173 P.L.R. 1900.

——*Bridge connecting houses situated on the opposite sides of a lane belonging to single owner—Right of owners of houses after they passed to different persons.*

There was a bridge put up by the predecessor in title of the houses now owned by the parties to the suit and situated on the opposite sides of a lane. The plaintiff wanted to rebuild the bridge but the defendant objected and the Municipality also refused permission. The suit was dismissed.

Held, that the houses having passed to different owners the rebuilding was rightly refused and the suit was properly dismissed. (Kensington, J.)

Manohar Lal *v.* Dhanpat Rai.—9 P.L.R. 1911; 51 P.W.R. 1911; 9 I. C. 402.

——*Burden of servient tenement—Its extension and enlargement not allowed—Owner of servient tenement to put a stop to it.*

Held, that enlargement or extension of an easement is not allowed by law, so when the owner of the dominant tenements unjustifiably enlarges the easement the owner of the servient tenement can put a stop to it. (Le Rossignol, J.)

Rura *v.* Ganda Ram.—102 P.L.R. 1917; 88 P.W.R. 1917; 42 I.C. 284.

——*Claim for possession of property—Plaintiff denying defendant's alleged right to easement—Burden of proof.*

Where in a suit for possession of property the defendant admits plaintiff's right to the property and claims to use it by right of easement the burden of proving that the defendant had used the property for a period of over twenty years as of right lies on him and not on the plaintiff. (Johnstone, J.)

Mir Mansab Ali *v.* Muhammad Akbar.—26 P.L.R. 1906.

——*Light and air—Rules for decision.*

Held, that in an action to remove a permanent obstruction to light and air the general principles to be followed are :—

(1) That the owner or occupier of a dominant tenement is entitled to the uninterrupted access, through his ancient windows, of a quantity of light, the measure of which is what is required for the ordinary purposes of inhabitancy or business of the tenement, according to the ordinary notions of mankind. (2) Whether the obstruction complained of amounts to an actionable nuisance. (3) That an obstruction is not actionable nuisance which neither lessens the letting or selling value of the house nor materially affects the comfort or convenience of the occupier according to its character

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as a residence or a place of business or warehouse though a large proportion of light and air previously enjoyed has been lost. (4) That in case of an actionable nuisance pecuniary compensation does not afford an adequate relief. L. R. 73; 1 J. Ch. 484, L. R. 74 L. J. Ch. 174; L. R. 74 L. J. Ch 621; 2 P. R. 1893, *followed*. 29 B. 157, *distinguished*. (Reid, J.)

Ver Bhan *v.* Ramji Das.—8 P.R. 1909; 33 P.L.R. 1909; 20 P.W.R. 1909; 1 I.C. 441.

——*Light and air—Injunction—Substantial loss*—Sic utere suo ut alieni non læ las.

Before granting a mandatory injunction the Court should be satisfied that a substantial loss of comfort has been caused and not a mere fanciful or visionary loss. The lower Appellate Court granted the plaintiff a mandatory injunction obliging the defendant to demolish his building erected on his own ground so as to restore an indefinite amount of light and a better current of air to ventilate three *jharokas* opening to a ground-floor room or cellar of the plaintiff's house. The plaintiff had not taken any action to stop the building, and the defendant in building his house up to his boundary, which was at a short distance from the plaintiff's house, had left air for plaintiff's *jharokas* near the ground but not so much light. *Held*, on revision, that the plaintiff had a just cause of complaint if the defendant had built a wall on his own land close up to the boundary and closing the air-apertures entirely, but since he had left plenty of space and caused hardly any inconvenience to the plaintiff, while improving his own property, and had fully carried out the precept of equity, *sic utere suo ut alieni non læ las*, the plaintiff's suit must be dismissed. (Anderson, J.)

Dhannu Mal *v.* Bhagwan.—138 P.L.R. 1902.

——*Privcy, right of*—

The fact that the occupant of a house can from its roof look into his neighbour's house or yard is no ground for holding that the occupant of the higher house is at liberty to open such windows as he choses. Looking out of a window does not attract the attention of neighbours to the fact that they are overlooked to the extent that being on a roof attracts such attention, and invasion of privacy in one direction and to a limited extent does not justify the exteusion of such invasion. (Reid, J.)

Nihal Chand *v.* Maulu.—108 P. L. R. 1903.

——*Right of—Covenant in deed of sale that neither vendor nor vendee will erect baloony in front of their respective shops—Vendor selling his shop to another—Plea of no notice by 2nd vendee how far material—Injunction.*

Held, that :—(1) In a suit for injunction based on an easement, whether created by convenant, grant prescription or otherwise, the purchaser of a property subject to such easement cannot successfully plead that he had no notice of its existance, and the principle of notice laid down in Section 40 of the Transfer of Property

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Act, 1882, is to no application as this section does not deal with right of that character. 7 Ind. Cas. 815; 12 C. L. J. 259, *followed*.

In the same way the provisions of Sections 56 (*f*) and 27 (*b*) of the Specific Relief Act I of 1877, regarding notice do not apply inasmuch as a suit of the above description cannot be considered as one for specific performance of a contract.

(2) As laid down in Section 3 of the Property Act a person is said to have notice of a fact when he actually knows that fact or when, but for wilful abstention from inquiry or search which he ought to have made, or gross negligence he would have known it.

(3) The facts and circumstances found and detailed in this case constitute constructive notice.

(4) General Registration itself also amounts to such notice.

(5) Where an interference with the right of an easement is *prima facie* a source of grave inconvenience to a person and reduces the value of his property grant of injunction is the proper relief. (Leslie Jones, J.)

Mahant Ram Singh *v.* Bhai Ram Singh.—48 P. W. R. 1917 ; 39 I. C. 778.

——*Right to flowing water in undefined channels—Prescription.*

A right to the use of water flowing in undefined channels cannot be acquired by presciption. (Martineau, J.)

Nagina Singh *v.* Malhi.—3 L. L. J. 555; 64 I.C. 158.

EASEMENT ACT, Ss. 7, 13, 15 and 16.

——*Ss. 7 and 15—Natural Stream—Meaning of—Rights of riparian owners—Prescription.*

Held, that the water of the *Cho* in that parts of its course at which it passes through Singhpur where it is largely increased in volume by percolation is not a stream with a defined channel. 1897 App. Cas. 129, *relied on*. Also Coulson and Forbe's Law of Water, 2nd Edition, page 58 and Ratan Lal's Law of Torts, 7th Edition page 287.

Held, therefore, that the defendants are entitled to appropriate as much of the water that passes through the lands of their village as they find that they require and the plaintiffs are not entitled to an injunction for the removal of a *dam* and a water course made by the defendant. 24 C. 865; 35 C. 851; 28 M. 236, *referred to*.

Held, further, that plaintiffs have not acquired a right to the water by prescription, for although they have been using the water for more than 20 years they have not been using it as of right. They had the use of it only because the defendants have not previously had occasion to use so large a quantity of the water themselves as to affect the plaintiffs. (Martineau, J.)

Nagina Singh *v.* Malhi.—3 Lah. L. J. 555 ; 64 I. C 158.

——*S. 13—Easement of necessity—Discharge of water through drainage in common courtyard—Partition of courtyard—Effect of—Easement of necessity—Proof of.*

Where P originally had the right to pass his water through the drainage existing in the common courtyard, and the

EASEMENT ACT, Ss. 16 and 26.

question was whether the partition of the courtyard had the effect of destroying his right of easement. *Held*, the onus lay upon the defendants to show that the right which the plaintiff possessed prior to the partition, had been extinquished by some agreement or rule of law. (1) That the fact that the plaintiff had got another tenement through which he could pass his water did not deprive the easement in question of the character of an easement of necessity. (2) That the plaintiff was not under any obligation to resort to any different method of discharging his water. (Shadi Lal, J.)

Buta Singh *v.* Lalla.—101 P.R. 1919; 53 I.C. 584.

——*S. 16—Acquisition of easement.*

Held, that the mere finding that a *Parnala* is old is no finding in law that an easement has been established with respect thereto. (Wilberforce, J.)

Ahmad Bakhsh *v. Mst.* Pali.—3 Lah. L. J. 58.

——*S. 26—Easement—Acquisition—Conditions—Enjoyment on payment to servient owner—Enjoyment not of right—Effect.*

Where the plaintiffs had been enjoying the working of a mill for nearly 50 years peaceably and openly on payment of a rent of Re. 1 per annum. *Held*, that the fact of payment was fatal to the plaintiffs' case and that the enjoyment was as of right. (1) The words "as of right" connote that the person claiming the easement must have exercised it as if he had been the true owner without permission or license from any one. (2) The payment of rent made periodically was evidence that the user of the alleged easement was not as of right but with the license of the owner of the servient tenement. (Shadi Lal, J.)

Sundar *v.* Nag.—4 P.R. 1917; 37 I.C. 788.

EJECTMENT.

——*Trespasser.*

Where plaintiffs sued for a share in ancestral property which the defendants had recovered from a trespasser and it appeared that the defendants in suing the usurper for possession had acted on their own behalf only and not on behalf of their co-heirs also. (Le Rossignol, J.)

Zulphi *v.* Asghar.—3 Lah.L.J. 441.

——*Failure to prove exclusive title by co-ower—Joint possession, if could be decreed.*

In a suit for possession of a plot of habitable site it appeared that plaintiffs and certain other persons on whose behalf the present action was brought, were co-sharers to the extent of nine shares out of 16 shares, the remaining shares belonging to defendants Nos. 1 and 2 along with certain other persons, but the defendants were occupying the land on their own behalf and asserted their exclusive title to it. *Held*, that as the plaintiffs had not succeeded in establishing the exclusive title of the co-shares who were proprietors in the *patti* to the extent of nine shares, they could not get a decree for ejectment, but that there was nothing to prevent them from obtaining a decree for joint possession of the land

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which was proved to be the property of all the co-sharers including the plaintiffs and the defendants. 18 C. 10 (P. C.), 29 P. R. 1918, *distinguished*.

Quare :—Whether the doctrine that a co-sharer occupying a portion of the joint land, who has not denied the joint character of the property, should be allowed to retain it until partition, is applicable to the peculiar circumstances of the *abadi* land more especially when the vacant land has already been reduced to a minimum area barely sufficient for the common purposes of the village.

Held, also, that the present Code of Civil Procedure confers a plenary jurisdiction upon the Court to order an amendment of the plaint even in the highest Court of appeal. (Shadi Lal, C.J. and Leslie Jones, J.)

Mauji Ashaq Ali *v.* Ghulam Muhammad.—3 Lah. L.J. 75.

——*Landlord and Tenant—Grant of Muafi right by Government—Effect.*

A *sanjidar* is a person who performs certain services in connection with *takyas* and in consideration thereof is given certain land to hold as a tenant under the owners.

Although a tenant cannot, by any unilateral act on his part, determine a tenancy that subsists between him and his landlord, yet if the landlord acquiesces in the tenant's repudiation of that relationship, the landlord is entitled to evict the former tenant as a mere trespasser and to apply to the Civil Court for his eviction as such.

It is not open to the Court to hold that a contractual relationship, which is disowned by both parties, still subsists as between them, at all events so far as those parties are concerned.

A *sanjidar* under the plaintiffs was granted certain *muafi* rights by Government. In a suit in 1907, the *sanjidar* filed a written statement in which he repudiated the relationship of landlord and tenant, which plaintiffs alleged to subsist between them and him, and asserted that he himself was the full proprietor of the property held by him. The plaintiff accepted this repudiation of the relationship and sued to evict the *sanjidar* as a trespasser. The *sanjidar* gave up the position adopted by him in the former suit, and in the present suit admitted plaintiff's proprietary rights, claiming to be a *sanjidar* not liable to ejectment.

Held, (1) that the plaintiffs were entitled to eject defendant. The cause of action accrued to the plaintiffs upon the denial by defendant of their title as owners, and his belated repentance could not put an end to the right which accrued to the plaintiffs on that cause of action.

(2) That the fact that the defandant was granted *muafi* rights by Government did not debar the plaintiffs from suing for his eviction, because they were in no way concerned with what accrued between Government and the defendant. (Rattigan and Shah Din, JJ.)

Mohomed Badar Khan *v.* Chiragh Shah.—16 P.L.R. 1912; 43 P.W.R. 1912; 13 I.C. 32.

——*Notice—Denial of landlord's title suit.*

Where, prior to suit the defendant tenant denied the title of the plaintiff and also stated that the leases in favour of the plaintiff had been executed on false pretences.

EJECTMENT.

Held, that, under the circumstances, the plaintiff landlord was not bound to give, before suit, notice of determination of the tenancy, even though the lessee themselves provided for giving such notice. 17 A. 45, *followed*. (Reid, C.J.)

Zia-ud-Din *v.* Gobind Ram.—76 P.R. 1911; 259 P.W.R. 1911 ; 13 I C. 323.

——*Onus—Possessory title.*

A plaintiff must prove his own title before he can oust a trespasser, even though the defendant has no title.

In a dispute about succession to the *mahantship* of *dharmsala* or other *waqf* property the first duty of a Court is to ascertain the rule of succession which obtains as regards the particular shrine.

The mere fact that plaintiff is a descendant of the original owner of the *Dharmsala* does not entitle him to oust a trespasser. (Chevis, J.)

Prem Singh *v.* Mohan Singh.—30 P.W.R. 1912 ; 22 P.L.R. 1912; 13 I.C. 62.

——*Title, proof of, to be strict—Claim as heir of deceased—Heirship to be strictly proved.*

Held, that in asmuch as the plaintiff being out of possession sought to dispossess the defendants from the land in suit, she must affirmatively establish a title superior to that of the defendants by proof of the most unimpeachable character. (Shah Din and Le Rossignol, JJ.)

Safa Chand *v. Mst.* Lajwanti.—150 P.W.R. 1917; 42 I.C. 103.

ELECTION.

——*Corrupt practice—Particulars—Amendment of petition—Candidate and Agent—Punjab Electoral Rules, R. 31.*

An election petition alleging corrupt practices on the part of the candidate cannot be summarily rejected for want of fuller particulars. An opportunity should be allowed for further and better particulars to be given. The object of furnishing such particulars is to avoid surprise to the respondent and from that point of view they are necessary in the interest of justice. A candidate is responsible for the acts of those who, to his knowledge, for the purpose of promoting his election canvass for him. (Kennaway, Abdul Qadir, Dalip Singh, Coms.)

Dauran Khan *v.* Muhabbat Khan.—61 I.C. 357.

——*Candidate and agent—Punjab Electoral Rules, R. 42 (1) (b).*

The relationship of candidate and agent is much wider than that of principal and agent and such relationship is to be inferred from facts. Where several voters were fed on the polling day by persons intimately connected with a canidate and acting on his behalf, the inference is clear that they are fed to induce them to vote for the candidate. (Kennway, Abdul Qadir and Dalip Singh, Coms.)

Raj Mal *v.* Lajpat Rai—61 I.C. 353.

ELECTION PETITION.

——*Election agent, if can be proposer—Punjab Government Notification No. 9 of 31—7—1920, Regulations 7 and II—Punjab Electoral Rules, Rr. 5 (4), 31, 34 (2) (a) and 42 (1) (c)—Amendment of petition —Nomination paper delivered before day fixed.*

The election agent of a candidate can be his proposer or seconder and *vice versa*. The Election Commissioners can allow further or better particulars to be furnished subsequent to the petition provided no new substantive charge is introduced and that the respondent is not taken by surprise. Where the returned candidate is declared duly elected on a single nomination paper and the validity of the election is questioned on the ground that it was delivered to the Returning Officer before the time fixed, the Commissioners have power to decide the point irrespective of the fact whether the point was raised before the Returning Officer Regn. 7 of Punjab Notification, No. 9, dated 31—7—1929 is ambiguous but as it is a disabling provision it must not be strictly construed against the nominee. The Regulation does not mean that a nomination paper delivered to the Returning Officer before the day fixed is invalid when the question of the falsity of the return of expenses comes before the Commissioners, they have power to decide the same. (Kennway, Abdul Qadir and Dalip Singh, Coms.)

Amin Khan *v.* Sikandar Hayat.—61 I.C. 744.

——*Form of—Amendment—Corrupt practice.*

The particulars of any corrupt practice alleged must be given in the Election Petition. The English Law in this respect has not been followed. The rules in India do not prescribe any form in which an Election Petition is to be drafted and a draft in the form given at page 415 of Halsbury's Laws of England, Vol. XII or in the form given for a plaint in the Civil Procedure Code, Election Commissioners can allow amendment of an Election Petition where it is sought to bring home a corrupt practice to any one it is the action of that person which must be primarily looked to. A spiritual leader can canvass for a candidate provided he holds out no threat or inducement. Indian Courts should administer the Indian Election Law and not the English Common Law. (Kennaway, Abdul Qadir and Dalip Singh, Coms.)

Barkat Ali *v.* Muharram Ali.—61 I.C. 337.

ELECTRICITY ACT, (IX OF 1910), S. 24.

——*Section 24, Sch. Cl. VI, Sub-clauses, 1, 2, and 3—Fuse or Cut-out —Service-line, cost of maintenance of—Liability of licensee—Installation, defective—Consumer whether liable to pay for new cut-out.*

Held, that :—(1) A fuse or cut-out is a necessary part of the service-line and is kept under the licensee's seal. (2) The licensee is bound to bear the cost of maintenance of the service-line whether or not it has been initially paid for by the consumer. (3) If the consumer's installation is defective, the licensee is entitled to discontinue the supply of energy to him. (4) In a case of a dispute as to any alleged defect, the licensee can take action under

ELECTRICITY ACT, (IX OF 1910), S. 24.

clause VI sub-clause (3) of the Schedule to the Electricity Act and refer the matter to an Electric Inspector who shall decide it. (5) If the licensee continues to supply energy to a consumer when he knows or has reason to believe that the latter's installation is defective he does so at his own risk and the consumer is not liable to pay for a new fuse or cut-out if the old one melts owing to a defect in his installation. (Scott Smith, J.)

The Lahore Electric Supply Co. *v.* Durga Das.—85 P.R. 1918; 77 P.L.R. 1918; 79 P.W.R. 1918; 45 I.C. 171.

EQUITY.

——*Debt incurred—Unconscionable bargain.*

Where a professional money-lender sued a person in difficulties for money, on a pro-note, the consideration being a much smaller sum than that mentioned in the pro-note, it was *held* that, at the time of executing the note, the defendant was clearly under the plaintiff's thumb, and a hard, unconscionable and exorbitant bargain was driven with him taking advantage of his necessities, and that the plaintiff could recover only the sum actually advanced by him, but with a high rate of interest (*e.g.*, 18 p.c.), as he ran considerable risk when he lent out the money. (Chatterji and Johnstone, JJ.)

Ram Das *v.* Netto.—185 P.W.R. 1908; 115 P.R. 1908.

———*Relief against onerous condition—Difference between original party and voluntary transferee from him.*

A sold certain property to B. A suit for pre-emption was brought in respect of the sale. A and B however, cancelled the sale and substituted a mortgage, the terms of which were exceedingly onerous The suit for pre-emption was accordingly dismissed. Subsequently, A sold his equity of redemption to C who sued for redemption of the mortgage and contended that he should be allowed to redeem the mortgage on payment of a much smaller sum than would be due under the onerous conditions of the mortgage.

Held, that :—(1) C as an assignee by purchase from A could not succeed in getting equitable relief against the onerous conditions of the mortgage unless he could show that A could get such relief. (2) under the circumstances of the case, neither A nor C was entitled to equitable relief from the conditions of the mortgage.

There may be circumstances entitling an assignee for value to equitable relief in regard to an unconscionable bargain but when Courts of Equity are considering their duty in regard to giving such relief, the position of a voluntary assignee by purchase must always be a different one from that of the original transferor. The foundation for equitable relief is that the original transferor, owing to the circumstances under which he finds himself, was more or less compelled at the moment to enter into the onerous bargain from the unconscionable conditions of which he seeks relief. The position of a voluntary assignee by puchase must always have this marked distinction that he has taken over the bargain under no such stress or compulsion.

ESCHEAT.

Form of the decree in the redemption suit under the new Code of Civil Procedure pointed out. (Robertson and Chevis, JJ.)

Sodhi Kishen Singh *v.* Sodhi Narendar Singh.—250 P.W.R. 1912 ; 14 I.C. 516.

—*Heirless land in a village owned by heterageneous proprietary body—Government entitled to succeed—Principles applicable in such cases—Proprietary body, right of.*

Held, that the following propositions are applicable to the subject of escheat to the Crown :—

The right of the Crown to claim escheat rests not on customary or Hindu Law, though Hindu Law recognizes escheats, but on grounds of general or universal law.

The right can only arise in the absence of relations entitled by law or custom to inherit.

The right of the proprietary body as a whole to succeed in cases in which it exists is primarily based on real or assumed relationship to the holder of the land, or to the member of the proprietary body from whom his title was derived.

Such a right should be assumed in the case of homogeneous estates or sub-divisions of estates, where the owners are all or nearly all of the same tribe as the last holder of the land or the member of the proprietary body from whom he derived his title.

It should not be assumed in the case of heterogeneous estates or sub-divisions of estates held by persons of different tribes or different gots of the same tribe. The presumption in such cases is that the State has a right of escheat.

When the property in the land was originally derived by gift from a member of the tribe of the original proprietary body the right of that body should be recognized on failure of the donor's and donee's lines.

In any case in which the *wajib-ul-arz* declares the right of the proprietary body to succeed to the land of heirless owners Government should set up no claim.

The land in suit was situate in Patti Mohra of Mauza Kaliana, Thanesar tahsil, Karnal District. The village was owned by an utterly heterogeneous proprietary body. The Jat proprietors were of different gots both in the village as a whole and in the patti concerned. The land was owned originally by a Jat of a got of which he was the only representative in the village. It was held after his death by his wife's nephews belonging to a village in the Amballa District. There was no possible claim of succession in the proprietary body of the village or the patti as a whole or in the Jat proprietors separately.

Held, that the land escheated to the Crown. (Douie and Meredith, F.Cs.)

Wazira *v.* Mangal.—3 P.W.R. 1911 Rev.; 2 P.R. 1911 Rev.; 188 P.L.R. 1911 ; 10 I.C. 294.

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——*Acquiescence—Custom—Alienation—Sale—Son not objecting to building upon land sold by father.*

Held, that, when the vendor's son stood by while the land sold was being built upon by the vendee, and, on his father's death, suit for its possession years after the sale, he (son) was estopped on the ground of acquiescence from contesting the alienation. (Shah Din and Chevis, JJ.)

Gopi Chand *v.* Ram Chand.—177 P.W.R. 1911 ; 12 I.C. 729.

——*Acquiescence—Silence—Sale of joint property by one of three brothers—Other brothers standing by for years and allowing vendee spend large sums on building.*

If one of the co-parceners sells a land belonging to the joint family without the consent of the remaining co-parceners and the vendee erects a costly building thereon with the knowledge and without any objection on the part of the latter, there is such acquiescence as estops them from questioning the sale. 10 Ind. Cas. 748 ; 12 Ind. Cas. 729, *relied upon.* 30 Ind. Cas. 161 ; 33 Ind. Cas. 762 ; 9 A. 434 ; 16 A. 328 ; 21 A. 496 ; 5 Ind. Cas. 997, *referred to.* (Broadway and Harrison, JJ.)

Dhanpat Rai *v.* Guranditta.—10 P.L.R. 1922 ; 2 Lah. 258 ; 64 I.C. 520.

——*Attestation—Mortgagor describing himself owner—First mortgagee signing and declaring, he has no objection to the mortgage.*

Where in a registered mortgage-deed, the mortgagor described himself as the owner of the property mortgaged, and in the deed it was distinctly stated and the statement was attested by B that B had no objection to the mortgage and subsequently a second mortgage was affected in favour of third parties who were to pay off the first mortgage. *Held*, that B was estopped from asserting his own interest in the property as against the second mortgagees.

An act may involve, and amount to a distinct declaration which may create an estoppel. So, if a man takes an active part in carrying out a mortgage on behalf of another, as by signing the deed, his acts may amount to a declaration of the validity of the mortgage as against any claim but his own. 19 I. A. 203 at pp. 212, 213 ; 20 C. 296, *referred to.*

The principles of section 41 Transfer of Property Act, *followed.* (Agnew and Shadi Lal, JJ.)

Mst. Basso *v* Mir Muhammad.—278 P.L.R. 1913; 20 I C. 291.

——*Community—Representation of—Dealings with—Pre-emption—Villagers if bound by acts of their representatives.*

The occupancy tenants of the village, sued for pre-emption in respect of the sale of the village by the proprietor. The tenants had not the necessary funds for the purchase and two of their body acting on behalf of the whole village introduced the present vendees to the vendor's agent as prospective purchaser, at the same time informing him that an agreement had been come to whereby their

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vendees should pay the money and acquire the property which should then be held as three-quarters for them and one-quarter for the tenants. The sale-deed was accordingly written and the purchase completed in favour of the proposed vendees.

Held, that the plaintiffs were estopped from claiming to pre-empt the sale which the vandees succeeded in obtaining through the active instrumentality of two of the villagers as representatives of the whole village.

It would require very strong and cogent reasons that would compel the court to hold an arrangement so extremely reasonable and wise and so much in the interests of all the villagers as that affected by appointing on behalf of the whole village two or three trusted and responsible inhabitants to act on their behalf to be bad simply because some of the villagers happened to be infants (Lord Buckmaster.)

Idris *v.* Mrs. Jane Skinner.—82 P.R. 1919 ; 56 I.C. 723 (P.C.).

——*By conduct—Adoption—Recognition of—*

Where the defendant who challenged the adoption was the grandson of a party to the compromise under which the adoption was made and under which he received a material benefit and who was present and consenting when the ceremonies were performed. *Held*, that defendant was estopped from disputing the adoption and was bound by his grandfather's action. (Broadway, J.)

Moman *v.* Dhanni.—1 Lah. 31 ; 55 I.C. 869.

——*Execution of decree—Claim partly decreed—Appeal for dismissed portion not barred by plaintiff seeking execution of the decree passed in his favour.*

Held, by the Full Bench, that a plaintiff who has obtained a decree for a part of his claim and has appealed as regards the part dismissed is not debarred from prosecuting the appeal because he has begun to execute the said decree. 82 P.R. 1868, *overruled*. (Reid, Johnstone and Rattigan, JJ.)

Raghu Mal *v.* Bandu.—31 P.R. 1907 ; 1 P.L.R. 1908 ; 64 P.W.R. 1907 (F.B.).

——*Execution Sale—Purchase subject to Mortgage—Purchaser if entitled to dispute validity and consideration—Mortgagee foregoing right to interest.*

Where a person purchases property subject to a mortgage he is not by that sole fact estopped from disputing the validity of or the consideration for the mortgage. But if the mortgagee has been thereby induced to suffer some detriment or if he foregoes a portion of his money, then the purchaser may be estopped from disputing the mortgage. (Rattigan, C. J. and Martineau, J.)

Bada Parshad *v.* Sujan Singh.—28 P.W.R. 1919 ; 49 I.C. 997.

——*Fmily settlement acted upon for years.*

A *Syed* of Kharkhuda left three widows, *A.*, *B.* and *C.* The whole of his property was entered in the names of his three widows. In 1881 and 1882, the widows gifted portions of their shares in

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favour of their relatives. The reversioners sued *B.* and *C.* for a declaration that the gifts made by *B.* and *C.* were invalid as against them and obtained a decree in 1887. *B.* died in 1882 and *C.* in 1887. *A.* had gifted certain land to her nephew, *D. E.*, A's husband's sister's son, was held in the previous suit to be one of the reversioners to whom the land would go on the widows' demise. After the deaths of *B.* and *C.* *A.* arrived at a settlement with *E.* In 1891 *E.* executed a registered deed binding himself to raise no difficulty in respect of his reversionary interest in the property gifted to *D* While *A.* executed an unregistered agreement to the effect that she would not dispute *E's* immediate right to so much of the shares of *B.* and *C.* as had been decreed to *E* in 1887, notwithstanding her intention of pressing a claim to her life-interest in the shares as against the remaining reversioners. Both *A.* and *E.* adhered to the bargains made in 1891. On 18th April 1897, *A.* executed a registered agreement in favour of *E.* reiterating what she had already intended by the unregistered document of 1891. In 1905, *A.* and *D.* as vendees from *A.* sued *E.* for possession of the land left with *E.* by the agreements of 1891 and 1897.

Held, (1) that the suit was not time-barred; (2) that there was ample consideration for the agreement of 1897, in the fact that *E.* had consistently abstained from suing to set aside the gift made in favour of *D*; (3) that *A.* could not repudiate the arrangement made in 1891 and 1897 and consequently *A.* and *D.* were not entitled to recover the land from *E.* (Reid, C. J. and Kensington, J.)

Muhammad Umar Ali *v.* Aman Ali.—251 P.L.R. 1911; 170 P.W.R. 1911; 12 I.C. 140.

——*Heir of deceased redeeming portion from stranger in possession—Suit for inheritance if barred.*

Held, that, where some of the heirs of a deceased person sue to get possession of the deceased's property they are restricted to their own individual shares if such shares can be ascertained and they have no right to recover whole of his property even if the remaining ones have distinctly declined to make any claim, and that this rule equally applies whether the contest is between two sets of the reversioners or reversioners and a stranger who is unable to establish any *prima facie* right at all. 2 P.R. 1882; 5 P.L.R. 1903; 111 P.L.R. 1908, *followed*.

Held also, that an heir is not estopped from claiming rest of the property of a deceased person in the hands of a stranger by reason of his redeeming from him (stranger) a small portion of that property. (Reid, C. J. and Kensington, J.)

Buta Singh *v.* Lal Singh.—37 P.L.R. 1915; 5 P.W.R. 1915; 27 I.C. 565.

——*Inconsistent positions—Pre-emptor denying* locus standi *of deceased vendee's sons to appeal—Whether he can give them a* locus standi *to execute his decree*

In a pre-emption suit, the vendee died before decree. By inadvertence the decree was passed against the dead vendee. An

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appeal by the sons of deceased vendee was dismissed on the ground, taken by the pre-emptor, that as their father had died before the decree was passed, they had no *locus standi* to appeal. Later on, the pre-emptor attempted to get the decree executed against the same sons *Held*, that the pre-emptor was legally—at any rate equitably—estopped from executing his decree against the sons, as he could not be allowed to confer on the sons a *locus standi* in execution proceedings which he had denied them in their appeal. (Chevis, J.)

Amolak Ram *v.* Shanu Ram.—174 P.L.R. 1911; 99 P.W.R. 1911; 10 I.C. 405.

—*Minor—False representation as to age—Evidence Act, S. 115.*

Plaintiff sued to recover the principal and interest due on bond executed by defendant on 4th February 1912. Defendant pleaded *inter alia* that he was not liable as he was a minor on that date. Defendant was born on 10 December 1891 and he was therefore about 20 years and 2 months old when the bond was executed. A guardian had been appointed for him, but the guardian resigned on the 18th May 1910. The District Judge passed an order that though the minor was 18 or 19 years of age and minority would continue the age of 21, as the appointment of a fresh guardian was discretionary and as the minor did not wish a fresh guardian to be appointed and was old enough by appearance to act for himself no fresh guardian need be appointed. After that the defendant managed his own affairs and acted as a man who has attained majority would do. The plaint alleged that the dealings were entered into on defendant's assurance that he had become an adult. This was disputed by defendant but the High Court found on the evidence (contrary to the finding of the District Judge) that the defendant did represent himself to be of full age and that the plaintiff was misled by false representation. *Held*, that S. 115 of the Evidence Act applied to the case and that the defendant's plea of minority could not be heard. 21 Bom. 198, *followed*. 23 Cal. 616 and 30 Cal. 539, *distinguished*. 29 Cal. 381, 25 Cal. 371, and 96 P.R. 1910, *not followed*. (Chevis, A. C. J. and Le Rossignol, J.)

Wasiuda Ram *v.* Sita Ram.—1 Lah. 389; 59 I.C. 593.

—*Mortgage—Purchase subject to.*

Where purchaser assumes liability for the discharge of certain mortgages on the property and receives consideration therefor, he is bound by them. (Scott Smith and Dundas, JJ.)

Allah Ditta *v.* Gian Singh.—4 Lah.L.J. 454.

——*Mortgage—Prior and subsequent mortgages—Sale of part of mortgaged property to mortgagee—Redemption of previous mortgage—Prior mortgagee not setting up his purchase as defence—Right of subsequent mortgagee to possession.*

When the sub-mortgagees purchase the shares of some of the heirs of the mortgagor in the property mortgaged and all

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the heirs sue for redemption of the mortgage and pending suit for redemption the property is mortgaged with third parties and out of consideration for this latter mortgage the sub-mortgagees are paid up and redemption of the previous mortgage is allowed, the sub-mortgagees are estopped from setting up their purchase from some of the heirs of the mortgagor against claim for possession made by the subsequent mortgagees. Their acceptance of the whole mortgage money constitutes an admission that the redeemed land had not been sold to them. (Reid, C. J. and Johnstone, J.)

Bala Bakhsh *v.* Lohri.—39 P.L.R. 1910; 8 I.C. 229.

——*Mortgagee informing vendee amount due on mortgage and vendee retaining same out of purchase money—Mortgagee whether can claim larger amount.*

Held, that where a mortgagee on inquiry by an intending vendee gives him the exact amount due on his mortgage and the latter acts on this information and retains that amount out of the purchase money for paying off the mortgage, the mortgagee is estopped from recovering any large amount from the vendee. (Scott Smith and Leslie Jones, JJ.)

The Secretary, Chief Khalas Dewan, Amritsar *v.* The Punjab National Bank Ltd.—141 P.R. 1919; 3 Lah. L.J. 274; 55 I.C. 492.

——*Mortgagor and mortgagee—Conduct—Mortgagor condoning defects —Effect.*

Where a mortgagor has fully condoned all defaults and defects in connection with and in the mortgage, he cannot insist upon its completion and is estopped from contesting its validity on the ground that the mortgagee has failed to complete it. (Johnstone and Chevis, JJ.)

Diwan Shib Nath *v.* Alliance Bank of Simla Ltd.—215 P.L.R. 1914; 3 P. R. 1915; 110 P.W.R. 1914; 25 I. C. 480.

——*Mutation of names on consent by minor's mother.*

A gift by a widow of her husband's land in favour of his daughter's son is not valid without the consent of the collaterals even if the donee be also near collateral of her husband. 179 P.R. 1889; 80 P.R. 1875; 98 P.R. 1891; 69 P.R. 1878; 172 P.R. 1889; and 38 P.R. 1870, *referred to.*

The assent to such a gift by the mother of a minor collateral does not bind him. A collateral by acting as a *sarbarah lambardar* of the minor donee who has got the *lambardari* in virtue of such gift, is not estopped from contesting its validity. But the collaterals who, before, or after the death of the widow, agree that the mutation of names as regards the gifted property should be effected in favour of the donee, cannot be allowed to challenge the gift. The collaterals can recover the gifted property within 12 years from the date of the widow's death under Article 141 of the Indian Limitation Act, XV of 1877, and the donee's possession does not become adverse as long as she is alive. Though it is a correct principle that persons carry their own customs with them wherever they go, it does not

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necessarily follow that they retain those customs unchanged after long residence amongst other tribes holding different customs.

The burden of proving that a daughter succeeds in the presence of near collaterals lies on the person asserting such a custom. (Johnstone and Chevis, JJ.)

Khaire Khan *v.* Ghulam Gaus.—32 P.R. 1911 ; 238 P.L.R. 1911 ; 46 P.W.R. 1911 ; 10 I.C. 387.

——*Mutition in the names of one set of heirs—Alienation by one of them in accordance therewith—Objection by other heirs.*

A person cannot be estopped (1) by a transaction to which he is not a party, (2) nor against a person who is a stranger to the same.

Accordingly, where Mrs. A. allowed the land of her deceased husband to be mutated in the name of her sons and attested as a witness a deed of sale by the sons in favour of H and another a deed of mortgage in favour of D, reciting that sons were full owners, and subsequently one of the sons sold what purported to be his share under the mutation in favour of N, and Mrs. A. and the daughters contested the alienation as incompetent being in excess of the sons' proper shares.

Held, (i) that the daughters were not estopped in any case.

(*ii*) that the fact of allowing the mutation in the name of the sons, as a family arrangement, could not estop Mrs. A. from asserting her claim to a share in the inheritance as against a stranger to the transaction.

(*iii*) that N, being no party to deeds executed in favour of H and D, and there being no intention in executing these deeds to deceive him, Mrs. A. could not be estopped as against N, a total stranger. (Robertson, J)

Niar Ahmad Khan *v.* Mrs. A. Abdulla and Mr. G. Abdulla.—p. 84 P.W.R. 1906.

——*Plea of—Pleading and proof.*

A person invoking the plea of estoppel must clearly plead precise facts which led him to believe that his transferor was the real owner and must show the precise nature of the enquiries he relied on.

In a suit for a declaration that plaintiff was the sole proprietor of the property in dispute and that defendant No. 3 had no right to mortgage 1/3rd share thereof to defendants Nos. 1 and 2 it appeared that although the house was purchased in the names of defendant No. 3 and his brother, the purchase money was paid by their father, the plaintiff, who was also either in possession or in receipt of rent from the tenants and whose name was entered in the Municipal Committee's registers with respect to the payment of house-tax.

Held, (1) that the real owner of the property was the father and that the sons were merely *benamidars* ; (2) that all the external *indicia* of ownership being in favour of the father they ought to have put the mortgagees upon an enquiry which, if prosecuted would have revealed the fact that the mortgagor was not entitled to deal with

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the property ; that in view of the above findings the mortgagees were not entitled to avail themselves of the plea of estoppel. 18 S.W.R. 166 (P.C.), *followed*. (Shadi Lal, J.)

Ram Sarup *v.* Maya Shankar.—46 P.R. 1918 ; 45 P.L.R. 1918; 33 P.W.R. 1918 ; 43 I.C. 556.

——*Pleadings—Party not raising objection to arbitration proceedings.*

Where a party to arbitration proceedings objected to the appointment of an umpire but did not press the objection forcibly and submitted to the proceedings without demur : *Held*, that the party was estopped from objecting to the appointment of the umpire or the regularity of arbitration proceedings. (Kensington, and Beadon, JJ.)

Jagan Nath *v.* Nanak Chand.—9 P.R. 1913; 248 P.L.R. 1918; 16 I.C. 996.

——*Pleadings—Objection to admissibility of document and complusion to withdraw.*

Held, that, a plaintiff, who by taking objection to the admissibility of a certain agreement upon which the defendants relied, practically compelled them to withdraw their previous suit, is estopped from asking the Court to grant him a declaratory decree upon the basis of that very agreement. (Rattigan and Chevis, JJ.)

Alam Shah *v.* Nurzaman Shah.—63 P.W.R. 1913 ; 114 P.L.R. 1913 18 I.C. 804.

——*Public way. Right of—Implied grant—Remission of revenue on land used as public way—Right of owner to claim compensation.*

Held, that the defendant by his conduct in allowing the right of way over his land to be used for a few years without objection, and in accepting remission of revenue for the portion of the land taken for the purpose, was estopped from denying the right of plaintiff or of any one else having occasion to pass over the ground so long as it was shown as a road in the village settlement, and was not entitled to claim any compensation for such user. (Andersen, J.)

Bhagwan Das *v.* Abdul Haq.—125 P.L.R. 1902.

——*Reliquishment of rights subsequent assertion of title—Bar.*

In a suit for possession of land it appeared that the plaintiff had, in an earlier suit brought against him by the present defendant, agreed to give up possession of the land in dispute to the defendant (the then plaintiff) by a deed of compromise and the suit was dismissed : *Held*, that the deed of compromise executed by the plaintiff in the earlier suit operated as a relinquishment of his right, title and interest in the land and that he was estopped from alleging that he still had a subsisting title to it, but his suit is not *res judicata*. (Shah Din, J.)

Chhanga *v.* Phumman Shah.—121 P.W.R. 1918 ; 46 I. C. 7.

——*Representation—Omission to object at partition proceedings—Effect. of—*

Held, that as the plaintiff had actually objected to the right of the defendants to claim a partition on the basis of the gift in their

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favour but he was pursuaded not to press his objections, his conduct in relation to the partition proceedings cannot operate as estoppel as against the defendants.

Held, also, that the plaintiff might not have actively opposed the redemption of the mortgage by the defendants for the reason that he was not quite certain about his own right of succession, but it cannot be said that he intentionally misled or assured the defendants that he recognised their right as donees and he is in any way estopped thereby. 69 P. R. 1917, *referred to.* (Leslie Jones and Abdul Raoof, JJ.)

Bishen Singh *v.* Bulanda.—4 Lah. L.J. 419.

——*Reversioner—Sale by widow—Mortgage by vendee to reversioner—No notice of sale to reversioner.*

Held, that a reversioner by unknowingly accepting the mortgage of the land in the joint holding sold by a widow to another reversioner is not estopped from contesting the validity of its sale and claiming share therein on her death particularly when the mortgagor alienates the land as a shareholder. (Chevis, J.)

Shera *v.* Hayat Mohamed.—108 P.L.R. 1914 ; 32 P.W.R. 1914; 23 I. C. 525.

——*By silence—When amounts abandonment of one's right—Government —Position of—Equitable rights of owner of land—Stranger building on land—Improvement—Compensation.*

That the Government's abstinence for a considerable period from suing for possession, the suit being within limitation, did not create an equity in favour of the defendant such as deprived the Government of its strict rights, that the latter had the option of making the defendant remove the materials of his buildings or paying compensation for the value of the buildings. 53 P.R. 1878 ; 105 P.R. 1901 ; 53 P.R. 1907, *referred to.* The Government's position differs from that of a private owner, and a period of abstinence from suit, which would be excessive in a private owner, is not excessive in the case of Government. (Reid, C. J. and Robertson, J.)

Rahamatullah Khan *v.* Secretary of State for India.—113 P.L.R. 1913 ; 112 P.W.R. 1913; 63 P.R. 1913; 18 I.C. 799.

——*Suit by guardian* ad-litem *minor—Subsequent suit in his personal capacity about property in dispute in first suit.*

A person who acts as the guardian *ad-litem* of a minor defendant in a suit which results in a decree against the minor is not estopped from contesting that decree and urging his own claim to the property in dispute in that suit, in a subsequent suit brought by him in his personal capacity against the plaintiff in the former suit. (Kensington and Beadon, JJ.)

Ganga Ram *v.* Narain Das.—118 P.L.R. 1914; 1 P.R. 1914; 22 I.C. 955.

——*Suit for possession as Mukarridars—Previous claim for improvements—Estoppel—Findings of Revenue Authorities—Mukarridars—Tenants at will.*

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Held, that a suit by a tenant for compensation for improvement of land before ejectment which was decreed estops the tenant from subsequently suing in Civil Court for possession of land on the alleged title as *Mukarrdars*.

Findings of the higher Revenue authorities on the question of tenant's status, though not *Res judicata* in a Civil Court, are entitled to the greatest possible weight, and it is not open to the Civil Court to ignore the findings of the appellate Revenue authorities and accept those of the subordinate Revenue officers which were reversed on appeal on the ground that the former were wrong and the latter right. (Kensington and Shah Din, JJ.)

Abdullah Khan *v.* Ghulam Jan.—186 P.L.R. 1912 ; 155 P.W.R. 1912 ; 16 I.C. 886.

—— *Vendor denying his title—Possession not permissive—Question of fact—Revision.*

Held, that it is a finding of fact that possession is not permissive and consequently cannot be questioned in Revision.

Held, also, that a person selling a property is not estopped from denying the correctness of his title so far as the claim of a third class person is concerned but such a vendor is not to be trusted when he is playing the vendee false by supporting that claim. (Chevis, J.)

Sham Singh *v.* Prem Singh.—260 P.W.R. 1912 ; 17 I.C. 508.

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—— *Account Books tempered with—Presumption against owner of books.*

When it is found that the account books of a party to the suit have been deliberately tempered with while in his possession at places were the Court should naturally expect to find relevant entries, the very strongest presumption arises that the fabrication has been effected in order to destroy evidence which would tell in favour of the opposite party and against the owner of the books. (Rattigan and Beadon, JJ.)

Pokhar Das *v.* Uttam Chand.—77 P.L.R. 1914 ; 49 P.W.R. 1914 ; 22 I.C. 560.

—— *Admissibility—Objection to, not to be taken on appeal, when waived in first Court.*

An objection that secondary evidence has been improperly admitted without sufficient foundation being laid for such admission will not be allowed to be raised for the first time in appeal. (Lord Atkinson, Sir Gorge Farewell, Sir John Edge and Mr. Amir Ali.)

Padman *v.* Hanwanta.—93 P.R. 1915 ; 11 P.L.R. 1916 ; 110 P.W.R. 1915 ; 29 I.C. 807 (P.C.)

—— *Admissibility—Objection to—Document marked as Exhibit but not admitted in evidence.*

Where a document has been marked as an Exhibit without any note on it to the effect that it has been admitted in evidence, and there is nothing to show that its treatment as evidence in the case was otherwise than tentative.

Held, that objection could be raised as to its admissibility at any later stage of the suit, on the ground that it was not properly stamped.

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A *hundi*, the stamp on which was not cancelled at the time of its execution, is not admissible in evidence. (Robertson and Rattigan, JJ.)

Sundar Das *v.* The Peoples Bank of India Ltd.—169 P.L.R. 1912; 272 P.W.R. 1912; 16 I.C. 834.

——*Admissibility of—Objection to when to be taken.*

Where plaintiffs in a suit to recover moneys advanced on the security of mortgage-deed attempted to prove consideration by reference to their books of account and on appeal the objection was taken that the books were not proved but it was established that the production of the books by the plaintiffs, the Trial Court had ordered a commissary to inspect and report on the books in the presence of parties and their Counsel which was done, and the defendants' Counsel after inspection furnished the commissary with a set of questions none of which suggested that the books were irregular or unreliable.

Held, that the books must be taken to have been adequately proved. (Chevis and Le Rossignol, JJ.)

Indar Narain *v.* Nanak Chand.—58 P.R. 1916; 58 P.L.R. 1917; 74 P.W.R. 1916; 32 I.C. 454.

——*Admissibility in—Of order of a Criminal Court in a civil suit for recovery of the said property—Consequence of producing no evidence in lower Court.*

Where by an order of the Chief Court on the criminal side, a mare was directed to be "restored to the purchaser from whose possession she was recovered," but was, however, in the possession of the defendant, who claimed it as his own, and plaintiff, (purchaser) relying exclusively on the Chief Courts order produced no evidence in support of his claim for the mare. *Held*, (1) that the order of a Criminal Court is speaking generally, no evidence in a civil suit, and (2) that, as apart from the order there was no evidence on the record to support the claim preferred, the suit must be dismissed. (Rattigan, J.)

Mangal Singh *v.* Anant Ram.—p. 80 P.W.R. 1906.

——*Admissibility of police reports.*

In this case the Court excluded the police reports from the evidence with the observation that 'police reports are not evidence and should not be treated as such though some of the Subordinate Courts are too fond of doing so; it is a practice to be condemned and avoided. (Robertson and Maude, JJ.)

Kalandar and Dad Khan *v.* The Empress.—p. 71 P.L.R. 1900 Cr.

——*Approver—Corroboration in material particulars necessary.*

Held, that, an approver's evidence cannot be accepted unless it is corroborated in material particulars by other and independent evidence. Doubted whether a *lathi* can be rightly described as a deadly weapon within the meaning and for the purposes of section 397 of the Penal Code. (Robertson and Rattigan, JJ.)

Lad Khan *v.* Emperor.—11 P.L.R. 1911; 19 P.W.R. 1912 Cr.; 13 I.C. 998.

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——*Circumstantial—Murder, offence of.*

Where it was shown that the accused was last seen with the child alleged to have been murdered and that he stripped her of most of her ornaments and sold them and where the child was found dead in a well and the accused denied all knowledge of the matter though he pointed out the well. *Held*, that the accused was guilty of murder and deserved death. (Kensington and Rattigan, JJ.)

Wadhawa Singh *v.* Emperor.—16 P.W.R. 1915 Cr. ; 27 I.C. 551.

——*Circumstantial evidence, in murder case—Proper method of dealing with it by the jury—Prisoner entitled to benefit of doubt.*

Held, that a jury in dealing with a murder case where there is no direct evidence but only what is called circumstantial evidence, has a two fold task ; it must first decide what portion of the circumstantial evidence has been established and then ask itself whether that is sufficient proof, *i.e.*, whether the facts proved exclude the possibility that the deed was done by some other person. It would not be proper to convict merely because the jury thinks the accused's guilt, probable.

Held, also, that if the jury have doubts, it should let the prisoner have the benefit of it. (Johnstone, C. J.)

Emperor *v.* Browning.—7 P.R. 1917 Cr. ; 42 I.C. 383.

——*Circumstantial—Value of in Criminal cases.*

In order to justify any inference of guilt from circumstantial evidence, the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt 8 C.W.N. 278, *followed*. (Scott Smith and Shadi Lal, JJ.)

Saleh *v.* Emperor.—65 P.L.R. 1917 ; 40 P.W.R. 1917 Cr. ; 42 I.C. 129.

——*Registration—Compulsorily registered mortgage-deed—Subsequent registered receipt for further advance and admitting consideraiton of the mortgage deed—Onus probandi of non-receipt of the consideration.*

Where A executed a deed of mortgage reciting certain consideration, in favour of H, which was compulsorily registered. One of the conditions was that H, could not sue for his money for 6 years and the mortgage carried no interest, and A gave notice that he would waive the condition of 6 years and H sent notice in reply that A could go into Court if he liked, to which A retorted that he could not sue for a decree that he did not owe plaintiff money. A did not sue for cancellation of the deed, which course was open to him and two years later a reconciliation was effected between the parties. A took some more money from H and executed a receipt (containing a full and categorical admission of the receipt of previous mortgage consideration and the further advance) and got it registered. *Held*, that this threw the onus of proving that A did not in fact receive the money very heavily on him and that he failed to discharge the same. (Robertson, J.)

Hafiz Ahmedyar Khan *v.* Hafiz Allah Bakhsh.—8 P.W.R. 1907

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——*Cross-examination—Admission that previous statement false—Duty of Court—Value to be attached to such statement.*

Plaintiff claimed partition of properties alleged to be joint. It was alleged by defendant in respect of some other properties that in various documents signed by the plaintiff and his pleader, respectively, these properties had been spoken of as the property of the defendant and it was urged, that plaintiff, could not be allowed to say that they were the joint property of the parties.

Held, that as it had not been proved that plaintiff knew the properties to be joint when he made the admissions there could be no waiver.

Held, also that the admissions were gratuitous and could therefore be withdrawn and they did not create an estoppel as they did not lead to any change in the defendant's position. 26 Cal. 81, *referred to*. (Wilberforce and Martineau, JJ.)

Manohar Lal *v.* Nank Chand.—66 P.R. 1919; 52 I.C. 479.

——*Custom of Delon Jats—Evidence of witnesses as to admissibility.*

Evidence of custom of Dilon Jats living outside a place is irrelevant, unless there is also evidence that the community follows the custom wherever they live throughout Punjab. (Shah Din and Chevis, JJ.)

Gobind Ram *v.* Suraj Kaur.—131 P.L.R. 1914; 114 P.W.R. 1914; 24 I.C. 470.

——*Disbelieved against all the accused but one—Its effect.*

Where the evidence for the prosecution was entirely discredited against 5 of the accused, and all the accused and witnesses belonging to one village, there could be no possibility of mistaken identity.

Held, that it would be quite unsafe to convict the 6th accused without any additional circumstance or corroboration on the evidence before the Court, which had been rejected as unreliable, in the case of the other 5 accused. (Chitty, J.)

Nur Khan *v.* Crown.—p. 27 P.W.R. 1906 Cr.

——*Expert witness—Likely to be unconsciously prejudiced—Opposition by other side is apt to create a spirit of partisanship and rivalry.*

Held, that an expert witness, however impartial he may wish to be, is likely to be unconsciously prejudiced in favour of the side which calls him. The mere fact of opposition on the part of the other side is apt to create a spirit of partisanship and rivalry so that an expert witness is unconsciously impelled to support the view taken by his own side. Ryan on Criminal Evidence in British India, Edition 1912 page 127, *followed*. (Shadi Lal, C.J. and Leslie Jones, J.)

Hari Singh *v.* Lachhmi Devi.—12 P.L.R. 1921; 10 P.W.R. 1921; 3 Lah.L.J. 110; 59 I.C. 220.

——*Inadmissibility of—Evidence of document when not material Finding of fact—Re-payments not proved—Second Appeal.*

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Held, that inadmissibility of a document purporting a debt is not material where the defendant has admitted having received the money borrowed by him.

Held, also, that the finding that defendant has not made any payments cannot be disturbed in Second Appeal. (Shah Din and Le Rossignol, JJ.)

Faz Ahmad *v.* Jiwan Mal.—158 P.W.R. 1915 ; 31 I.C. 800.

—— *Maps and plans prepared by patwaris not in discharge of their circle duty—Admissibility—Pre-sumption, statements in—Relevency—Evidence Act, S. 83.*

In a suit for possession of certain land on Mahalla Ganj Sultani, Multan City, by the Government as its owner, certain maps, plans and statements were complied in 1871 of the plots, owned by Government by patwaris but it was outside their regular circle of duty. There was no statement in progress at the time and no notification. The patwaris were specially deputed for the work and they got special reward for it.

Held, that the plans, etc. were made by authority of Government for public and not private purposes the patwaris who compared them, being public servants ; these documents must be presumed to be accurate under S. 83 of the Evidence Act and they were relevant under Ss. 35 and 36 of the Act.

Where the original map was prepared on paper and from it one on cloth was made, held that the map on the cloth was the original, as the one on paper was merely a draft. (Reid, C. J. and Robertson, J.)

Rahimtullah *v.* Secretary of State.—63 P.R. 1913 ; 113 P.L.R. 1913 ; 112 P.W.R. 1913 ; 18 I.C. 799.

—— *Material alteration of a document.*

Held, that the affixing of a stamp on an account in a Bahi, and the writing of words "half rupees 500" and 'Ticket one anna' on the left outside the stamp was not a material alteration of the agreement which rendered the document inadmissible in evidence. (Chatterji, J.)

Beli Ram *v.* Bhagwan Das.—40 P.L.R. 1901.

—— *Material alteration of a document—Adding a name as an executant—Admissibility in evidence.*

Held, that alteration in a material particular of a deed, after execution, and without the consent of the other party to such deed disentitles the party who has so altered it from seeking afterwards to enforce it. Addition of a name as one of the executants of the deed as an alteration in a material particular. (Harris and Rattigan, JJ.)

Karam Ali *v.* Narain Singh.—35 P.L.R. 1901 ; 91 P.R. 1900.

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——*Possession—Mutation in the Revenue Records.*

The mere act of mutation of names in the Revenue records is insufficient to prove by itself transfer of actual possession of the mutated land but it is some evidence of possession. (Anderson and Harris, JJ.)

Jawahir *v.* Jaimal Singh.—142 P.L.R. 1901.

——*Presumption—Pedigree table prepared at settlement—Circumstances to show that parties are descended from common ancestor.*

Held, that where the predecessors of the parties are shown to—(*a*) possess holdings of nearly equal size, almost consecutive, (*b*) hold equal shares in the *Shamlal* khata, and (*c*) occupy a joint compound, the presumption is that they are descended from a common ancestor. Such a presumptive proof coupled with other *prima facie* reliable oral evidence is quite sufficient to rebut the correctness of a pedigree-table prepared at an earlier settlement, which shows that they are not so descended. (Kensington, J.)

Kanwar *v.* Nathu.—60 P.W.R. 1909 ; 4 I.C. 549.

——*Prohit's books—Entries in admissibility.*

Held, that the entries in the Hardwar Prohit's books as to relationship of the pilgrims are admissible in evidence. (Broadway and Moti Sagar, JJ.)

Kartar Singh *v.* Kirpa Singh.—30 P.L.R. 1922; 32 P. R. 1902.

——*Report of Local Commissioner—Local Commissioner appointed by incompetent Court.*

Where the decree passed by the District Judge on appeal is set aside as passed without jurisdiction and the appeal is decided by the Divisional Judge acting on the report of a local Commissioner appointed by the District Judge, *held*, that the proceedings of the local Commissioner could not be treated as evidence for purposes of decision as the authority of the local Commissioner proceeded from an incompetent Court. (Chatterji, J.)

Numdar *v.* Naim.—40 P.L.R. 1902.

——*Settlement records and Jamabandis—Pre-sumption of correctness—Alienation—Gift of produce of land for charitable purposes—Incompetency of Courts to invent legal term to define relationship of parties* inter se*—Malguzar.*

In this case the claim was for possession of 5 kanals and 16 marlas of Land, in Mohrapur Jajir, Parganah Nawa Shahr, district Jullundhur of which Plaintiffs were dispossessed in 1912.

The ancestors of the Plaintiffs were absolute owners of the land who had on some date prior to 1851, gifted to the ancestors of the Defendants some of their rights by which the latter were allowed to take half of its produce from the donors who were to remain in possession of the property.

The donees were in the beginning also muafidars, but in process of time the Government resumed the muafi and from that time onwards, the ex-muafidars became responsible for the land revenue and

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were termed malguzars. The gift in fact was to help *Udasi Fuqirs* on charitable grounds. These facts were supported by Settlement Records and Jamabandies.

Held, that :—(1) In the absence of any satisfactory evidence to the contrary the entries in the Settlement Records must be accepted as correct. (2) There was no intention of transferring ownership or possession of the land to the donees. (3) Where the rights of the parties *inter se* are perfectly well defined and both parties have acted in accordance therewith for a long time, it is not necessary for the Courts to interfere and find out the exact meaning of the term malguzar or to invent a legal expression to define their relationship. (4) The Court has to look at the thing itself and its incidents without attaching to it a technical nick name of a kind calculated to mislead. 86 P.W.R. 1909, *referred to.* (Shadi Lal, J.)

Milkhi Mal *v.* Gulab Singh.—154 P.L.R. 1915 ; 79 P.W.R. 1915 ; 29 I.C. 893.

—— *Witness discredited as against one—Whether cannot be believed against another—Cross-examination—Right to ask story given in examination —Chief examination.*

Where the court distrusts the evidence produced in a case in particular, or as regards one accused, it does not necessarily follow that it should reject the evidence altogether.

No hard and fast rule can be laid down as to the right of Counsel to demand in cross-examination that a witness should repeat the story which he has told in the examination in chief. (Rattigan and Chevis, JJ.)

Lakha Singh *v.* Emperor.—89 P.L.R. 1914 ; 30 P.W.R. 1914 Cr. ; 22 I.C 724.

—— *Witness produced by accused not believed—Witness acquitted of the offence of perjury—Conviction of accused set aside on appeal—Retrial of accused—Discretion of Magistrate to consider the evidence of witnesses examined on the previous occasion.*

D was tried for an offence under section 395, Indian Penal Code. He pleaded an alibi and produced six witnesses to prove it. The Magistrate thought that all this evidence was false. D. was convicted and proceedings were taken against the witnesses for perjury. On appeal by D., his conviction was set aside on the ground of serious irregularity in the trial and was left to the District Magistrate to see if any fresh trial of D was advisable.

The witnesses tried for perjury were also acquitted some by the Sessions Judge, and others by the Chief Court. D, was, however again tried for the same offence, and in defence he said that he would not produce these witnesses again though he wished their evidence already taken to be considered. The Magistrate declined to consider the previous defence evidence unless the men were again produced in Court.

EVIDENCE ACT, (I OF 1872), Ss. 7 AND 8.

Held, that, under the circumstances, the Magistrate exercised a wrong discretion in refusing to consider the evidence. (Kensington and Chevis, JJ.)

Daim *v.* Emperor.—41 P.L.R. 1914 ; 17 P.W.R. 1914 Cr. ; 22 I.C. 334.

— *Ss. 6 and 122—Evidence of by-stander sometime after commission of offence—Evidence of wife of what her husband told her—Relevancy.*

A statement by a person alleged to be the eye-witness of a murder made to persons who came to the scene of occurrence after the murderers had left the place, cannot be proved against the accused for the purpose of showing that their names were mentioned as murderers.

In order to make the statement of a by-stander admissible, it must have been made, as contemplated by section 6 of the Evidence Act and illustration (*a*) to it, at the time the transaction was taking place, or so shortly before or after it as to form part of the transaction. If the transaction has terminated and then the statement is made, the statement is irrelevant. The admissibility is dependent on continuity.

The evidence of the wife of the accused as to certain communications between her and her husband is inadmissible under section 122 of the Evidence Act. (Chevis and Shadi Lal, JJ.)

Jowala Sahai *v.* Crown.—226 P.L.R. 1915 ; 34 P.R. 1914 Cr.; 27 I.C. 664.

— *Ss. 6 and 8*—Res gestæ—*Report by woman raped—Statements to neighbours.*

Where a woman, who was raped, on being questioned by a relative of her husband told him that the accused had raped her, and asked him to tell her father-in-law in his field, which he did, and when her father-in-law on being told what had happened came home, she made the same statement to him.

Held, that the statements and the commission of the offence cannot be regarded as forming parts of the same transaction and section 6 of the Evidence Act is inapplicable.

Woodroffe and Amir Ali's Law of Evidence, sixth edition, page 132, *referred to.*

Held, however, that the statement that she made to her husband's relative is in the circumstances a complaint ; and that that statement and the one which she made to her father-in-law when he came home are admissible in evidence under section 8 of the Evidence Act. 1 K.B. 551, *followed.* (Martineau, J.)

Raman *v.* Emperor.—4 Lah. L.J. 491.

—*S. 8—Intention of parties—Conduct.*

The conduct of the parties after the transaction of sale is important in order to ascertain whether the parties intended ownership

EVIDENCE ACT, (I OF 1872), Ss. 11, 17 and 18.

to pass independently of payment of consideration. 7 P.R. 1897 (Rev.) and 68 P.R. 1900, *referred to.* (Johnstone and Chevis, JJ.)

Bhagwan *v.* Allah Ditta.—27 P.L.R. 1911 ; 41 P.W.R. 1911 ; 55 P.R. 1911 ; 9 I.C. 547.

——*S. 11—Entry in hospital register if admissible.*

Held, that an entry made in a register of indoor patients in a hospital is admissible in evidence under section 11 of the Indian Evidence Act, I of 1872 to prove that the person mentioned in the entry was in the hospital on a certain date (Chevis, J.)

Amolak Ram *v* Emperor.—56 P.L.R. 1918 ; 13 P.W.R 1918 Cr. ; 43 I.C. 429.

——*Ss. 11 and 12—Inference of guilt—Relevancy of facts incriminating one of two accused—Mercy—Prerogative of—Recommendation for.*

Where a murder of an illegitimate child was the work of one of two persons, the mother of the child or the midwife or nurse and there was no ostensible motive for the nurse to kill the child, the mother was held guilty, though the accused's pregnancy being reported at the thana and the birth of the child being no secret in the village, the motive against the mother was also not clear ; (ii) the Chief Court directed the copy of the judgment to be laid before H. H. The Lieutenant Governor, as it was probable that the mother committed the crime in a distracted state of the mind. (Chatterji and Robertson, JJ.)

Mehroo *v.* The Crown.—8 P.W.R. 1907 Cr.

— *Ss. 17, 19 and 21—Admission—Confession of guilt to police—Civil suit for damages—Admissibility of confession.*

Admissions of guilt by one of the defendants in a suit to a police officer though not receiveable in evidence in a criminal trial may be proved in Civil proceedings under Ss. 17, 18, and 21 of the Evidence Act. (Rattigan and Leslie Jones, JJ.)

Bishen Das *v.* Ram Labhaya.—106 P.R. 1915 ; 187 P.W.R. 1915 : 32 I.C. 18.

——*Ss. 17 and 32—F. I. R. by accused—Admissibility.*

Though a first information report is valuable corroborative evidence it cannot support a conviction, when the maker of the report himself is an accused person and cannot therefore be examined as a witness. But where such a report contains an admission not amounting to a confession, the admission is admissible in evidence against the accused. (Shadi Lal, C. J. and Abdul Qadir, J.)

Kaku *v.* Emperor.—63 I.C. 822.

——*S. 18—Admission after cessation of interest—Validity.*

Held, that an admission made by the creditor after transferring his debt to a third person, to the effect that the debt had been paid to him in part or whole before he sold the claim, is not binding upon the vendee under section 18 of Act I of 1872. (Chevis, J.)

Chanda Singh *v.* Wasawa Singh.—202 P.L.R. 1914; 108 P.W.R. 1914; 25 I.C. 144.

EVIDENCE ACT, (I OF 1872), Ss. 21 and 24.

——*S. 18—Admissions—Co-defendants—Admission by some binding on others.*

Where there are several defendants jointly interested in a particular matter, an admission by some of them is relevent against all the defendants. 44 C. 130 ; 45 C. 159, *referred to.* (Le Rossignol and Martineau, JJ.)

Bhikka Mal *v.* Puran Mal.—69 I.C. 35.

——*S 21—Admission—Value of, as evidence.*

What a party admits to be true may reasonably be presumed to be so, and until the presumption is rebutted the fact admitted must be taken to be established. 29 All. 184 (P.C.); 106 P.R. 1917, *referred to.* (Bevan Petman, J.)

Vir Singh *v.* Harnam Singh.—1 Lah. 137 ; 56 I.C. 191.

——*Ss. 21, 24, 25, 26 and 91—Oral confession to a Magistrate admissible in evidence—Cr. Pro. Code, S. 164*

An oral confession by an accused person, not being open to exception under Ss. 24, 25 or 26 of the Evidence Act is, as an admission by an accused person, a relevant fact and may be proved at his trial under S. 21 and therefore such a confession made to a Magistrate is relevant and may be proved by the evidence of the Magistrate. 21 P.R. 1881 (Cr.) ; and 52 P.R. 1887 (Cr.), *referred to.* 9 Mad. 224, *distinguished.* (Scott Smith and Shadi Lal, JJ.)

Feroz *v.* Emperor.—11 P.R. 1918 Cr. ; 45 I.C. 843.

——*S. 21 (2)—Admission by agent—Admission in favour of principal by agent—Inadmissible.*

An admission by an agent in favour of his principal cannot be relied on by the latter to prove his title to property. (Scott Smith and Martineau, JJ.)

Maula Bakhsh *v.* Jafar Ali Khan.—4 L.L.J. 437.

——*Ss. 24, 25 and 26—Confession by accused in police custo y in the presence of a Magistrate on leave outside Jurisdiction—Accused not aware of the presence of Magistrate—Evidentiary value of confession.*

Evidence is inadmissible to prove a confession made while an accused person is in Police custody, except in for as any fact is discovered in consequence of the information so received from him.

A Magistrate, though on leave and not in the District in which he has been exercising jurisdiction, is a "Magistrate" within the meaning of section 26 of the Evidence Act. A confession made in the presence of such a person is relevant and admissible.

Very little value can be attached to such a confession when the fact that a Magistrate was present at the time the confession was made was not known to the accused, who was under the impression that he made the statement in the presence only of the Police and their friends. (Reid, C. J. and Rattigan, J.)

Faiz Ullah *v.* Emperor.—38 P.L.R. 1914; 8 P.W.R. 1914 Cr.; 22 I.C. 150.

EVIDENCE ACT, (I OF 1872), S. 24.

——*S. 24—Confession by accused—Retracted—Corroboration, necessity for.*

A confessing prisoner should not be condemned upon a retracted confession unless it is corroborated in material particulars.

Where it is a question of using a confession against a co-accused and the Court is not prepared to accept the confession *per se* as sufficient, the corroboration ought to be of the kind that not only confirms the general story of the crime but also unmistakeably connects the co-accused with the commission of the crime. 7 P. R. 1904 Cr.; 30 P. R. 1914; 15 Cr. L. J. 203, *distinguished.* (Scott Smith and Shadi Lal, JJ.)

Emperor *v. Mst.* Jawai.—70 P.L.R. 1918; 19 P.W.R. 1918 Cr.; 44 I.C. 179.

——*S. 24—Confession in the presence of a police officer while in Jail—Admissibility of.*

A confession made by an accused while in the custody of a Jailor is not inadmissible on the ground of a police officer having been present when it was made. 20 B. 795, *followed.* (Kensington C. J. and Shah Din, J.)

Nadir *v.* Crown.—214 P.L.R. 1914; 8 P.R. 1914 Cr.; 24 I.C. 568.

——*Ss. 24, 25, 26 and 27—Confession—Information received from accused while in custody of police—Admissibility.*

Where the accused was alleged to have stated that he would find out the spot where he had committed the murder.

Held, (1) That so much of the accused's statement as related to the discovery of the spot, would be relevent but that the further statement that it was at that spot that he had committed the murder was inadmissible in evidence. (2) That it was not the intention of the Legislature to allow the police by an ingenious perversion of the provisions of S. 27, to get rid of the safeguards thrown round prisoners by Ss. 24, 25 and 26 of the Act, and that the exception of the general rules must be very strictly confined within its legitimate limits. 3 Bom. at p. 17; 11 Bom H.C.R. p. 242 and 10 Bom. p. 547: 12 Mad. 153 and 13 P.W.R. 1913, Cr., *referred to.* (Kensington, C. J. and Rattigan, J.)

Tara Singh *v.* The Crown.—11 P.R. 1915 Cr.; 61 P.W.R. 1915 Cr.; 29 I.C. 817.

——*Ss. 24 and 25—Confession to Zaildar in consequence of inducement whether admissible—Retracted confession, value of—Corroboration necessary.*

Where a person suspected of having committed a murder made a confession to the zaildar, in consequence of the latter dropping a remark to the effect that his own brother had committed a murder but had got off on making a clean breast of the matter.

Held, that (*a*) the zaildar, although not in charge of the investigation, was a leading man holding a responsible post, and that this remark of his was a distinct inducement to the accused to make a confession which rendered the confession inadmissible in evidence; (*b*) That inasmuch as the Police were in the immediate vicinity at the

EVIDENCE ACT, (I OF 1872), S. 24.

time of the confession and the accused, though not handcuffed, was in Police detention as a suspect, he was to all intents and purposes in Police custody and the confession could not be proved unless made to a Magistrate.

Held, also, that (1) where a retracted confession is the sole evidence against an accused, it can be of but little value, especially remembering the race for a pardon which sometimes occurs when a number of persons are suspected of an offence and others have already confessed or are believed to have already confessed. (2) As against a co-accused, a confession which has been retracted at the first opportunity should not be relied upon, unless corroborted by independent testimony.

Held, further, that the mere fact that a blood stained garment is found in a house is not sufficient proof that any particular member of the family residing in that house is guilty of a murder which has recently been committed in the village. (Johnstone, C. J. and Chevis, J.)

Ram Singh *v.* Emperor.—26 P.R. 1916 Cr. ; 153 P.L.R. 1916 ; 32 P.W.R. 1916 Cr. ; 34 I.C 642.

——*Ss. 24—Person in authority—Confession—Admission of guilt—Statements made by accused to Zaildar on promise of benefit.*

Held, that admissions made by the accused to the Zaildar were not admissible in evidence for it appeared that the Zaildar had told the accused before the statements were made that they would get some benefit from Government if they spoke the truth. (Kensington and Shah Din, JJ.)

Mutsaddi *v.* Emperor.—221 P.L.R. 1911; 57 P.W.R. 1911 Cr.; 12 I.C. 642.

—— *S. 24—Person in authority—Lambardar—Confession induced by threats—Admissibility.*

Held, that a *Lambardar* is a person in authority and a confession induced by him by the use of threats is inadmissible in evidence under section 24 of the Evidence Act. (Scott Smith and Abdul Raoof, JJ.)

Muhammad Yar *v.* The Crown.—4 Lah. L.J. 235; 1922 Lah. 263.

——*S. 24—Person in authority—Zaildar or Lambardar.*

Section 24 of Act 1 of 1872, bares the admissibility in evidence of a confession made to a Zaildar under some inducement by him; and under section 25 of the Act such a confession cannot also affect an accused if at the time of making it he is in the presence of a Police Officer or at a distance of a few yards from him. (Reid, C.J. and Rattigan, J.)

Kutab Ali *v* Emperor.—14 P.R. 1911 Cr. ; 42 P.W.R. 1911 Cr. ; 12 I.C. 973.

——*Ss. 24. 25, 26, 27 and 30—Statement made in police custody and before Magistrate—Admissibility against him and accused jointly tried—Record by Magistrate of statement, cure of—Criminal Procedure Code, Section 364—Plea of guilty, when allowed to be withdrawn.*

Held, by the Full Bench that :—

EVIDENCE ACT, (I OF 1872), S. 25

1. An answer to the following effect to a charge under section 376 Indian Penal Code, 1860, constitutes a plea of guilty.

"I did not commit rape, I only held the lady's hands."

But, when the accused at the time of making an incriminating statement is enfeebled by illness and is undefended, withdrawal of the plea can be allowed if the accused wishes to withdraw it.

2. No part of a criminating statement whether amounting to a confession or not, written by an accused person himself while in Police custody is admissible either against him or against the person jointly tried with him unless it has led to the discovery of any fact within the terms of section 27 of the Indian Evidence Act, I of 1872.

3. A deposition not amounting to a confession of a person recorded on solemn affirmation by a Magistrate is admissible against the deponent only but not against the person jointly tried with him.

4. A statement made by an accused person before a magistrate who subsequently commits him to the Court of Session must be recorded in the form prescribed by section 364 Criminal Procedure Code, 1898, but any defect therein can be cured by proving it by the evidence of the Magistrate recording the same.

5. A confession of an accused is not admissible under section 30 of the Indian Evidence Act, 1872, against a co-accused if the former is convicted on his own plea of guilty. 5 Cal. 954; 5 All. 253, *referred to*. (Reid, C.J. and Rattigan, J.)

Crown *v.* Shuldham.—222 P.L.R. 1915; 44 P.W.R. 1914 Cr.; 28 I.C. 145.

——*S. 25—Confession in the presence of police—Admissibility.*

Held, that a confession made by an accused to a private person in the presence of the Police are inadmissible in evidence against him. (Rattigan, J.)

Chanan *v.* Emperor.—320 P.L.R. 1913; 37 P.W.R. 1913 Cr.; 21 I.C. 468.

——*Ss. 25 and 26—Confession while in Jailor's custody—Admissibilty.*

The accused, while in jail in the course of a conversation carried on between him and some witnesses, who had gone there to identify him, made a confession in the presence of the Jailor and a Police Officer present there at the time:

Held, that the confession did not fall under section 25 or 26 of the Indian Evidence Act, and therefore was admissible in evidence. (Kensington and Shah Din, JJ.)

Nadir *v.* Emperor.—8 P.R. 1914 Cr.; 214 P.L.R. 1914; 24 I.C. 568.

——*S. 25—Confession to Excise inspector—Admissibility of in evidence.*

An Excise Inspector is not a Police Officer, and, therefore, a confession made to him is admissible in evidence against the accused. (Shah Din and Chevis, JJ.)

Emperor *v.* Wazir Singh.—3 P.R. 1918 Cr.; 133 P L.R. 1918; 44 I.C. 588.

EVIDENCE ACT, (I OF 1872), Ss. 25, 26 and 27.

——*S. 25—Police Officer—Meaning of—Village Officer in Punjab—Confession to—Admissibility in evidence.*

In the Punjab a village Chaukidar is not a "Police Officer" within the meaning of S. 25 of the Evidence Act and a confession made by an accused person to a Chaukidar is consequently admissible under the Section. (Chevis and Leslie Jones, JJ.)

Khuda Bakhsh *v.* Emperor.—42 P.R. 1917 Cr. ; 43 I.C. 84.

——*S. 25—Evidence—Confession—Incriminating statements made before parties.*

An incriminating statement made by an accused person to police when nothing is discovered in consequence of it cannot be admitted in evidence against him. 10 Cal. 1022 ; 6 Bom. 34 ; 14 Bom. 260 ; 19 Bom. 363, *followed*. (Reid, J.)

Farid *v.* The King Emperor.—16 P.R. 1906 Cr. ; 111 P.L.R. 1906 ; p. 2 P.W.R. 1906 Cr.

——*S. 26—Confession—Admission—Accused in Police custody—Admission.*

An admission made at any time by a person charged with a crime stating or suggesting the interference that he committed that crime is a confession, and is inadmissible in evidence when made by the accused while in police custody. 11 W. N. Cal. 702 at page, 707 ; 16 Bom. p. 260, 10 Cal. p. 1022. (Chatterji, J.)

Hakima *v.* King Emperor.—20 P.R. 1905 Cr. ; 51 P.L.R. 1905.

——*S. 26—Retracted confession—Value of—Discovery of clothing of victom—Value of—Statements transferred to Sessions Court under S. 288 Cr. Pro. Code—Value of.*

Held, that :—(1) A confession made by an accused before the committing magistrate which he retracts both before and after commitment is of no value as a price of evidence against him. Feroz *v.* Crown (Cr. Appeal No. 284 of 1914), *followed*. (2) A conviction cannot be based upon statements of witnesses transferred to the record of the Sessions Court under section 288 Criminal Procedure Code 1898, when they came forward after the accused confessed and gave only circumstantial evidence insufficient to connect the accused with commission of the crime. (3) It is not safe to rely upon the articles of clothing when the body itself is not identificable on account of advanced decomposition. (Shah Din and Scott Smith, JJ.)

Ghanwara *v.* Emperor.—15 P.W.R. 1915 Cr. ; 30 I.C. 436.

——*S. 27—Accused—Admissions—Admissibility in evidence.*

Held, that it is illegal to base conviction of a person upon the uncorroborated testimony of an approver. The fact of his depositing considerable amount of money with another for redeeming his land, if sufficiently explained, is no corroboration of any value of the approver's evidence that the person had obtained the money as his share of the booty in the dacoity. The confession of a co-accused does not rank as corroboration of the statement of an approver.

EVIDENCE ACT, (I OF 1872), S. 27.

Held, also, that under section 27 of Act I of 1872, it is quite legitimate to record evidence that an accused person said "*I will point out certain property*" if his that statement leads to a discovery, but it is not legitimate to record as evidence that an accused person said "*I will point out certain property which I obtained as my share of the booty in the dacoity.*" (Leslie Jones, J.)

Gurdit Singh *v.* Emperor.—52 P.L.R. 1918; 9 P.W.R. 1918 Cr.; 44 I.C. 967.

——*S. 27—Confession—Accused pointing out stolen property concealed in a pond.*

The accused pointed out the place in the pond where the bundle of stolen ornaments was recovered. The prosecution alleged that the accused had said to the police that he had buried the things in the pond.

Held, that the statement of the accused was inadmissible in evidence. (Chevis, J.)

Kaka Singh *v.* The King Emperor.—155 P.L.R. 1908.

——*S. 27—Confession after discovery of property—Re-discovery—Admissibility of confession.*

Once property has been discovered in consequence of information received from a suspected person, it cannot be re-discovered in consequence of information received from another suspected person. It is only the information that was given by the first person and which led to the actual discovery which may be proved under the terms of section 27 of the Evidence Act. (Scott Smith, J.)

Buda *v.* Emperor.—9 P.L.R. 1922; 1922 Lah. 315; 64 I.C. 502.

——*S 27—Discovered in consequence.*

Held, that where a material fact, for instance the manner in which a theft has been committed, has already been discovered by some other means and accused's subsequent statement relating to the same fact, while in the Police custody is not admissible against him under section 27 of Act I of 1872. (Williams, J.)

Manna *v* Emperor.—3 P.W.R. 1911 Cr.; 9 I.C. 232.

——*S. 27—Discovery of revolver and bullet as result of information by accused—Admissibility of statement—Arms Act, S. 19 (f) and 20.*

A statement made by the accused while in police custody in consequence of which arms are found buried on a field is admissible in evidence against the accused. 15 Bom. 260, *followed*.

Ishar Singh *v.* Emperor.—72 P.L.R. 1916; 24 P.W.R. 1916 Cr.; 50 P.W.R. 1915 Cr.; 33 I.C. 823.

——*S. 27—Incriminating statement of accused—Police custody while pointing out or producing instruments with which or the spot where the offence is alleged to have been committed—Blood stains or a zemindar's clothes—Police diaries to be used in the interests of the accused—Criminal Procedure Code, S. 162.*

Held that:—

1. Incriminating statements by way of confession made by an accused person while in Police custody when producing or

EVIDENCE ACT, (I OF 1872), S. 27.

pointing out articles connected with the commission of a crime are inadmissible under section 27 of Act I of 1872.

The statement of an accused that he burried the weapon of the offence in a certain place is relevant but not the part of that statement that it was the weapon with which he had committed the crime. So also the statement that he would point out a certain spot and the evidence that at the spot indicated blood stains would be found would be admissible, but not the part of that statement that it was at this spot that he had committed the crime.

2. Where the accused produces the article himself though the fact that he actually produced it at a particular place may be proved but the accompanying statement to the effect that he buried it there is inadmissible in evidence. 10 Bom. 595, *followed*.

3. Where an accused person has throughout consistently refused to make any confession before a Magistrate and against whom there is practically no evidence at all, his incriminating statement under section 27 of Act I of 1872, must necessarily be received with the greatest caution and suspicion although deposed to by the respectable Police Officers and the village authorities.

4. The Police Diaries etc., should be referred to under section 162 of the Criminal Procedure Code, Act V of 1898 in the interest of the accused person for checking the evidence of the prosecution witnesses to see how far their statements can be relied upon.

5. Blood stains on a Zamindar's clothes are very seldom incriminating. (Reid, C.J. and Rattigan, J.)

Santa Singh *v.* The Crown.—171 P.L.R. 1913; 15 P.W.R. 1913 Cr.; 19 I.C. 190.

——*S. 27—Information by persons leading to the discovery of certain facts—Necessity of proving the information given by each specifically—The first information only admissible.*

Held, that:—(1) Where two persons are alleged to have given certain information to the Police which led to the arrest of another accused, it is only the information given first which can be admitted under section 27 of the Evidence Act. It is also necessary that the information given by each should be precisely and separately stated. 92 P.L.R. 1902; 6 All. 509, *followed*. (2) The statement of an approver, veracious though it may appear to be and though the truth of a large part of it be established beyond all doubt, nevertheless require corroboration. (3) The person at whose instance a dacoity has been arranged and committed and is present at the time of its commission but connives at it is guilty as principal offender. (4) The recognition of the dacoits by inmates of the house in which dacoity is committed is unreliable where the dacoits are not known to them before and are wearing Mundazas, *i.e.*, they had at least covered the lower parts of their faces with clothes tied under their chins and over their heads. (Leslie Jones, J.)

Ram Singh *v.* The Crown.—7 P.R. 1916 Cr.; 35 P.W.R. 1916 Cr.; 34 I.C. 993.

——*S. 27—Statement made by accused during investigation—Discovery of articles mentioned—Admissibility of statement in evidence.*

EVIDENCE ACT, (I OF 1872), Ss. 27 and 30.

The accused made a statement during investigation by police as to his having thrown a darri and a gandasa into the canal. In consequence of the statement the police recovered the darri and the gandasa from a neighbouring village, having discovered from a boy the fact that the darri and gandasa had been found in the place pointed out to them by the accused.

Held, that there was immediate connection between the statement and the discovery and the statement was admissible in evidence. (Chevis and Leslie Jones, JJ.)

Kapur Singh *v.* Emperor —98 P.L.R. 1918 ; 50 I.C. 481.

——*Ss. 27 and 30—Theft, evidence of—Discovery of articles when pointed out by several accused—Admissibility of—Comparison of tracks.*

Held, that where more than one accused person in custody of the Police point out or produce any article jointly it is usually impossible to be sure which of them really does the pointing out or the production and which simply follows the other, consequently, evidence of joint discovery is inadmissible against any of the accused persons, particularly where the witnesses on the point are not precise and trustworthy. 8 P. W. R. 1909, *followed*.

Held, also, that track evidence is not of any value whatever where the comparison has been made 8 or 9 days after the affair. (Johnstone, J.)

Pathana *v.* The Crown.—63 P.L.R. 1914; 9 P.W.R. 1914 Cr.; 24 I.C. 587.

——*Ss. 30 and 133—Confession not relevant against maker, if relevant against accused—Statements—Confession—Accomplice.*

A house was broken into at night and certain property stolen. During the police investigation, one K stated that he and U had committed the burglary. On search some stolen property was recovered from U's possession. U alone was sent up for trial and K. appeared as a witness for the prosecution. K in the evidence gave the same story, implicating himself and U. On this the Magistrate transferred K from the witness box to the dock and trying them jointly convicted both of them. It was found on appeal that K's statement, which amounted to a confession, had been induced in one of the manners specified in section 24 of the Evidence Act.

Held, that as K's confession could not be used against himself, as being irrelevant under section 24 of the Evidence Act, it could not be taken into consideration against U a co-accused.

Held, also, that K was not an accused person when he made his statement as a witness before the Magistrate but K was an accused person with U when his statement was used against both and consequently it was a confession.

Held, further, that as an accomplice is a witness and not an accused person. Section 133 of the Evidence Act did not affect the question in the case. (Reid, C. J. and Johnstone, J.)

Emperor *v.* Umda.—9 P.R. 1911 Cr. ; 166 P.L.R. 1911 ; 32 P.W.R. 1911 Cr. ; 10 I.C. 340.

EVIDENCE ACT, (I OF 1872), S. 30.

——*S. 30—Confession—Evidentiary value—Test of admissibility.*

Whether the confession of an accused can be used against his co-accused should be determined on seeing whether the accused can be convicted on that confession of the crime with which he and the co-accused were charged. (Shadi Lal, C.J. and Wilberforce, J.)

Chunni Lal *v.* Emperor.—60 I.C. 660.

——*S. 30—Confession—Re-tracted—Admissibility against co-accused.*

A, B and C were convicted of murder. A. made a statement before the police and also b fore the committing Magistrate to the effect that the murder was committed by B and C. He did not implicate himself but stated that he was forced by threats of death to sit outside the door of the room where murder was committed. A retracted the statement at the trial in the Court of the Sessions Judge. *Held*, that the statement of A could not be used against B and C. *Held*, also, that their being no evidence to corroborate the statement made by A he was entitled to be acquitted. (Reid, C.J. and Rattigan, J.)

Gul Hassan *v.* The Crown.—24 P.R. 1910 Cr. ; 193 P.L.R. 1910; 38 P.W.R. 1910 Cr.; 8 I.C. 250.

——*S. 30—Confession of one accused—Retracted—Admissibility of retracted confession against co-accused.*

Held, that a retracted confession may be taken into consideration under section 30 of the Evidence Act as against the persons tried jointly with the confessing accused for the same offence, but as a general rule such a confession should not be considered as supplying sufficient evidence for the conviction of the co-accused unless it is corroborated by independent testimony in material particulars affecting such co-accused. (Johnstone and Shah Din, JJ.)

Ataya *v.* Emperor.—5 P.R. 1911 Cr. ; 91 P.L.R. 1911 ; 27 P.W.R. 1911 ; 10 I.C. 857.

——*S. 30—Confession—Retraction of—Effect on persons jointly accused.*

Extra judicial confessions from frightened boys, but retracted soon after are not enough to prove guilt against the co-accused. (Reid, C. J. and Rattigan, J)

Kutab Ali *v.* Emperor.—14 P.R. 1911 Cr. ; 42 P.W.R. 1911 Cr. ; 12 I.C. 973.

——*S. 30—Confession—Retracted confession—Evidentiary value of.*

Where one accused made a confession which he subsequently retracted and in which he carefully avoided saying that he took any actual hand in the murder though he did state that he was one of the original conspirators and that he was present and saw the murder being committed without attempting to interfere. *Held*, that this confession cannot be taken into account against the co-accused, inasmuch as the person making confession did not intended to implicate himself though he actually did so. Against him, however, the confession which has been voluntarily made may certainly be taken into account. *Held*, also, that no importance can be attached to the statement of a witness who is discovered at a very late stage of the investigation. (Shadi Lal, C.J. and Harrison, J.)

Hayat *v* Emperor.—4 Lah.L.J. 41; 1922 Lah. 119; 68 I C 401.

EVIDENCE ACT, (I OF 1872), S. 30.

——*S. 30—Confession made by co-accused pleading guilty—Admissibility against other accused.*

Where one of several accused persons pleads guilty and the Court accepts the plea, though not in express terms at the moment the plea is put in, any confession made by such person is inadmissible as against the other accused. 25 M. 61 at p. 69 (P.C.) 19 B. 195, 23 M. 151; 1 P.R. 1909 Cr., *followed*. (Johnstone and Shah Din, JJ.)

Kanhaya *v.* Emperor.—15 P.R. 1911 Cr.; 54 P.W.R. 1911 Cr.; 12 I.C. 981.

——*S. 30—Confession of co-accused—Joint trial.*

Held, that a prisoner who escaped from custody during trial and before charge and has been tried separately after re-arrest cannot be said to have been tried jointly with one whose trial, from a stage prior to the charge, was saparate, by reason of the escape from custody of the co-accused, and that the trial not having been joint, the confession of the co-accused was not admissible against the prisoner. (Reid, J.)

Hussan *v.* The Emperor.—29 P.R. 1901 Cr.

——*S. 30—Confession of co-accused—Value of.*

The confession of a co-accused can not *per se* sustain a conviction and to do so, it must be corroborated *aliunde* by independent evidence in some material circumstance. (Shadi Lal, C.J. and Leslie Jones, J.)

Kher Singh *v.* Emperor.—11 P.W.R. 1921; 59 I.C. 913.

——*S. 30—Confession—Corroboration—Nature of retracted confession.*

Held, that :—(1) The finding from the house of the confessing person's brother of an axe, with which murder is said to have been committed, and his Chadar, with coloring matter of blood on both, and the evidence of witnesses who saw him going with the deceased shortly before commission of the crime towards the place where the offence has been committed is sufficient to corroborate the confession (2) It is a well established principle of Law that a confession of a co-accused canot be regarded as sufficient proof to support a conviction of another co-accused unless it is corroborated in material particulars by other evidence.

But the evidence that a short time before commission of the crime the accused were seen going together in company of the deceased towards the scene of its commission is not sufficient corroboration for convicting a co-accused on the strength of that confession. (Chevis and Shadi Lal, JJ.)

Muhammad *v.* The Crown.—3 P.W.R. 1915 Cr.; 5 P.L.R. 1915; 27 I.C. 221.

——*S. 30—Confession—Implication of co-accused—Retracted at trial—Corroboration essential.*

Where one of two co-accused makes a confession implicating the other co-accused as well, independent evidence should be forthcoming to corroborate the confession in regard to each accused implicated.

EVIDENCE ACT, (I OF 1872), S. 32.

When N and R husband and wife, were accused of the murder of N's brother and R made a confession before the Committing Magistrate implicating her husband as well, but subsequently retracted the confession : *Held*, that as there was no real corroboration of the retracted confession against N and against R herself there was merely the retracted confession corroborated solely by evidence of her absence from her house during the night of the alleged murder, the accused were entitled to the benefit of the doubt and must be acquitted. (Shah Din and Le Rossignol, J.)

Nur Muhammad v. Emperor.—163 P.L.R. 1915; 22 P.W.R. 1915 Cr ; 29 I.C. 101.

— *S. 32 (2)—Admissibility in evidence of dying declarations.*

In this case Karim, Said Malik and Feroze, were killed in a fight with the appellant and his party. The Sessions Judge accepted the dying declarations of Karim and Feroze, and held that the appellant stabbed Karim, Feroze had declared before his death that Said Malik and Karim had died from the effects of wounds, but he could not say at whose hands in particular they received those wounds, all the four accused including the appellant being present.

Held, that the dying declaration of Feroze was not admissible against the appellant who was not alleged to have wounded Feroze or to have done more than cause the death of Karim.

Had the case for the prosecution been that several men including the appellant attacked Feroze, a dying declaration by the latter, including the appellant among his assailants, although the appellant did not strike him, would be admissible on a charge of abetment against the appellant, but the charge against the latter did not include any offence committed aaingst Feroze.

Section 31 (1), Evidence Act, makes a dying declaration admissible only in the case in which the cause of the death of the deceased comes into question.

The fact that the alleged murderers of Karim and Feroze were tried jointly did not extend the admissibility, the cases against each of the prisoners being as separate as were the charges against them.

So much of the dying declaration of Karim as attributed his injury to the appellant was accepted as against the appellant. (Reid and Chatterji, JJ.)

Fakir v. The Empress.—17 P.R. 1901 Cr.

— *S. 32—Dying declaration—Recorded by Magistrate—Necessity of proof.*

A dying declaration recorded by a Magistrate cannot be accepted in evidence, when it has not been proved by taking the statement of the Magistrate. (Reid, C. J. and Kensington, J.)

Ghazi v. Emperor.—48 P.W.R. 1911 Cr. ; 17 P.R. 1911 Cr. ; 14 I.C. 417.

EVIDENCE ACT, (I OF 1872), Ss. 32 (1).

— *S. 32, sub-section (1)—Dying declaration—Value of trustworthy—Murder—Plea of voluntary drunkenness—I. P. C., Sections 85, 86 and 302.*

Held, that a trustworthy dying declaration alone made by a deceased person in full possession of the faculties and proved by the clearest and most reliable evidence to be in exact words of the person making it and corroborated by the surrounding circumstances is sufficient to sport a conviction for murder under section 302 Indian Penal Code. 9 P. R. 1900 Cr; I. L. R. Cal. 8 p. 211, *distinguished.*

Held, also, that under the terms of sections 85 and 86 Indian Penal Code voluntary drunkenness is no excuse for committing a crime. (Robertson and Rattigan, JJ.)

Karim Khan *v.* The Crown.—4 P.W.R. 1909 Cr.: 1 I.C. 100.

— *Ss. 32 (1) and 111 n (a)—Admissibility of statement of deceased who committed suicide owing to ill treatment by accused charged under 330 Indian Penal Code.*

F and K. were tried by the District Magistrate and convicted of an offence under section 330, Indian Penal Code, and sentenced to simple imprisonment and fine. On appeal the Session Judge reduced the sentence to the fine or imprisonment under section 323. This being in effect an acquittal of the charge under section 330, the Government appeals. The sole point in the case is, whether the statement of the deceased that he committed suicide owing to the ill-treatment of the accused for purposes of extorting a confession could be taken against them :

Held, that the statement of the deceased was admissible in evidence under section 32 (1) and 32 illustration (*a*) of the Indian Evidence Act, as there was no doubt, that the suicide was the result of the ill-treatment received at the hands of the accused and so that treatment was the cause, though not direct, of the death, and though the accused are not legally responsible for the suicide, the cause of death comes into question in this case, the whole affair, ill-treatment and subsequently suicide being all one transaction. (Shah Din and Chevis, JJ.)

Emperor *v.* Faiz.—20 P.R. 1916 Cr.; 47 P.L.R. 1917; 42 P.W.R. 1916 Cr.; 35 I.C. 998.

— *S. 32 (1)—Statement by deceased person—Relevancy of.*

According to section 32 (1) of the Evidence Act, a statement made by a person who has died since the statement was made, if otherwise relevant, is not irrelevant simply because the person who made it was not at the time under expectation of death. Where two person were killed by the violent assault committed on them by several accused persons—*Held*, that the statements made by the deceased before their deaths relating to the circumstances of the assault which resulted in their deaths were relevant against all the accused persons. 17 P. R. 1901 Cr., *distinguished.* (Clark, C. J. and Rattigan, J.)

Khana *v.* The Crown.—67 P.L.R. 1905.

EVIDENCE ACT, (I OF 1872), Ss. 32 (5), 33 and 34.

——*S. 32 (5)—Oral evidence—Relationship—Special means of knowledge.*

Entries in the books of Hardwar priests, if proved to have been made *ante litem motam*, would be of great value in establishing a pedigree-table.

The fact that an open plot of land is the joint property of a large number of persons residing in the same locality has a very remote, if any, bearing upon the relationship *inter se* of the joint owners.

Oral evidence of persons who have no means of knowing the alleged relationship and are interested in the success of the case supported by them cannot be of much value for the purpose of proving an issue upon the decision of which the title to property of a large value depends. (Johnstone and Shadi Lal, J.J.)

Ram Singh *v.* Dowlat Singh.—97 P.W.R. 1914; 171 P.L.R. 1914; 23 I.C. 550.

——*S. 33—Evidence—Statement of living person in previous judicial proceeding—Admissibility in evidence.*

M instituted a suit against *F* for restitution of conjugal rights. *B* who alleged that *F* was his wife, was also impleaded as a defendant. Both *F* and *B* denied *F's* marriage with *M*. A statement made by *F* in a prosecution of *B* under section 498 Indian Penal Code was relied on by *M* in the present suit. *B* was not examined as a witness. It was contended that the statement was admissible in evidence under section 33 Evidence Act.

Held, that contention was not valid and the statement could not be admitted in evidence. (Broadway, J.)

Mohammad Khan *v. Mst.* Fattan.—12 P.L.R. 1919.

——*S. 34—Account books—Entries in—Corroboration of—*

The original Court decreed the plaintiff's suit based on a bahi account after disallowing certain items which it held not proved. The defendants admitted dealings with the plaintiff and a great number of the items in the bahi. The Divisional Judge on appeal dismissed the suit in toto on the ground that the plaintiff's books were unreliable. The bahi was, according to the report of a Commissioner appointed by the Court, correct and regular according to village custom in the part of the country to which parties belonged and the plaintiff had himself stated on solemn affirmation that the account was correct.

Held, that the decree dismissing the suit was wrong. The Chief Court allowed the items which had been corroborated by the statement of the plaintiff. (Reid, C. J. and Scott Smith, J.)

Hanwanta *v.* Akbar Khan.—147 P.L.R. 1910; 117 P.W.R. 1910; 80 P.R. 1910; 7 I.C. 1011.

——*Ss. 34 and 32 (2)—Account book entries—Corroboration.*

Entries in account books which are relevant only under S. 34 are alone insufficient to charge a person with liability without evidence in corroboration of the entries. Where the entries are, however relevant under S. 32 (2) they do not require, corroboration. (Shadi Lal, C. J.)

Rani *v.* The Firm Bahadur Mal Bhuti Mal.—63 I.C. 946.

EVIDENCE ACT, (I OF 1872), Ss. 34 and 35.

—— *S. 34—Entries in account books—Proof of liability—Proof—Appropriation by creditor.*

In order to charge a defendant with liability something more is required than mere entry in a book of account, however, well and regularly kept. (Johnstone and Shadi Lal, JJ.)

Abdul Ali *v.* Puran Mal.—277 P.L.R. 1914; 82 P.R. 1914; 25 I.C. 560.

——*S. 34—Account books, proof of entries in.*

It is not a condition precedent to accepting entries in account books as relevant under Section 34 Indian Evidence Act that it should be proved how the accounts came to be written, and that they were regularly kept in the course of business; what is necessary is that there should be other evidence in support of the liability sought to be established. 23 W.R. (P.C.) 391, *referred to.* The testimony of one of the plaintiffs and their gomashta, who were examined as witnesses for the defence, was considered sufficient corrobortive evidence of the accounts to charge the defendants with liability. 63 P.R. 1897, *referred to.* (Walker and Maude, JJ.)

Bichha Lal *v.* Jai Pershad.—p. 18 P.L.R. 1900.

—— *S. 34—Entries of payments in Account books—How to be proved—Point raised in second appeal—Practice.*

Where the plaintiffs can easily produce independent and trustworthy evidence in support of entries in their account-books, it would be unfair to defendants and wrong in principle to accept as sufficient proof of the entries, uncorroborated by any evidence other than a somewhat vague statement by one of the plaintiffs to the effect practically that the books speak for themselves.

A point not touched by the grounds of appeal and not raised independently in the grounds of appeal, cannot be taken up for the first time in further appeal. (Rattigan and Beadon, JJ.)

Ganga Ram *v.* Kaka Ram.—47 P.L.R. 1914; 53 P.W.R. 1914; 22 I.C. 403.

—— *S. 35—Registers of birth and death—Entries in.*

The entries in the *Chaukidars*, death and Birth Registers are a strong piece of evidence. (Rattigan and Beadon, JJ.)

Uttam Chand *v.* Chanan Das.—51 P.R. 1913; 283 P.L.R. 1913; 200 P.W.R. 1913; 20 I.C. 462.

——*Scope of.*

Mere production of books of account without proof is not sufficient to charge a defendant with liability although it may have been shown that they had been regularly kept in the course of business. 13 I C. 673 and 22 I C. 403, *followed.* (Abdul Raoof and Harrison, JJ.)

Abdul Haq *v.* The Firm Shivji Ramkhem Chand.—1922 Lah. 338.

—— *S. 35—Entry of mutation by Tehsildar not presumed to be correct it is incorporated in the Jamabandi—Relevancy of such entry.*

As an entry made in Mutation Register by the Tehsildar may be made the subject of appeal to the Collector, it has not the force of

EVIDENCE ACT, (I OF 1872), S. 35.

an entry in an Annual Record till it may have been incorporated in the Jamabandi, and no presumption can be made as to its correctness under section 44 of the Land Revenue Act.

But an entry in a Public Record made by a public servant in the discharge of his duty, it is relevant under section 35 of the Evidence Act.

In the absence of a contract to the contrary, if once a sale has been agreed to for a consideration, part payment of which has been deferred by arrangement, the vendor cannot withdraw it for full consideration not being paid according to the agreement of the parties. 132 P.R. 1879, *followed*. (Chatterji and Anderson, JJ.)

Gharib Khan *v.* Sikandar.—91 P.R. 1902.

——*Ss. 35—45, 64 (a) and 74—Evidence of public officer refusing cross-examination.*

The accused was convicted of having forged a bond purporting to have been executed on the 31st July 1884. The main evidence in the case was that of the store-keeper in the office of the Superintendent of Stamps, Calcutta, to the effect that the stamp paper on which it was written was not manufactured till February 1st, 1890. The witness deposed that his knowledge was based on papers received from the India Office and that he was unable to give a copy of the papers without authorization from his superiors, that there were marks on the paper by which he could form an opinion as to the year in which the paper was manufactured but that the marks were private and he was prohibited by his superior officer from pointing them out. It was objected that this evidence was inadmissible, and if admissible, was worthless as the witness could not be cross-examined.

Held, that the evidence was not admissible in evidence and, even if it were, it was very inconclusive owing to the refusal of cross-examination. The witness was not giving evidence as an expert, for he was not stating an opinion on any of the points referred to in paragraphs 45-50 of the Evidence Act, his knowledge was based on the papers received from the India Office, and those papers were not produced. Granting that those papers were admissible as public records under Section 35 and 74 of the Evidence Act, yet they could only be proved by production of the papers themselves or by secondary evidence of the nature described in Section 64 (*e*) and they could not be proved by the oral evidence of the witness. (Clark, C. J.)

Ganga Ram *v.* The Emperor of India.—66 P.L.R 1903; 5 P.R. 1903 Cr.

——*Ss. 35, 74, 80, and 90—Limitation Act, 1877, Section 19—Acknowledgement of minor.*

The documents on which reliance was placed by respondents to prove the minority of one K. D. were—

(*a*) the statement *K. D.* before the *Tahsildar*, dated 29th July 1842, in which he gave his age at 19;

(*b*) the statement of one *N. R.* dated the 1st September 1842, before Mr. Ross, in which he stated his client's age was 19 :

EVIDENCE ACT, (I OF 1872), Ss. 35, 41 and 42.

(*c*) the descripted roll of *K. D.* in which his age was entered 18 years, and it was stated that hair was just appearing on his face ;

(*d*) *K. D's* own statement, dated 5th September, before the Assistant Commissioner in which his age was put down as 18 ;

(*e*) the statement of the *Patwari* before the Settlement Deputy Collector, dated 9th September 1842 in which he said that in the measurements 1246, *Fasli* (about 1830) the land was entered in the name of Manohar Das, *Waris* of *K. D.* ; and

(*f*) a certified copy of an entry in the Municipal Death Register, dated the 13th February 1884, in which the age of *K. D.* was given as 60 years :

Held, that the documents referred to by the respondents were public documents within the meaning of Section 74 (1) (*iii*) of the Evidence Act, and documents (*b*) (*d*) and (*e*) and their contents were sufficiently proved by their production under Section 80 of the Act. Similarly, under section 90 the other documents were to be presumed genuine. Under Section 35 the descriptive roll, the entry in the Municipal Register of Deaths in the 1884, and the *Patwari's* statement about the entry in the Revenue papers in 1246 *Fasli* were clearly relevant evidence.

An acknowledgement of liability by a minor is not efficacious within the meaning of Section 19 of the Limitation Act—8 Bom. 99; 16 Mad. 227; 9 P. R. 1897; 4 M. and W. 653, *referred to*.

(Chatterji and Maude, J.)

Anis-ul-Rehman Khan *v.* Beni Ram.—59 P.R. 1901.

— *S. 35—Settlement—Records of recent settlement—Value of—*

Held, that the records of the recent settlements are more reliable than those of the old ones as in modern times the formers are prepared with more care and accuracy. (Johnstone and Chevis, JJ.)

Hafiz Amir Ali *v.* Ram Sarup.—180 P.L.R. 1914 ; 81 P.W.R. 1914 ; 24 I.C. 993.

— *S. 41—Exhaustive nature of—Judgment in rem.*

Held, that the decision based on the compromise does neither bar the present suit as res-judicata nor it is judgment in rem under S. 41 or relevant under sections 42 and 43 of the Indian Evidence Act 1 of 1872. (Reid, C. J. and Johnstone, J.)

Rahmat Ali Khan *v.* Babu Zohra.—14 P.R. 1912; 157 P.L.R. 1912 ; 96 P.W.R. 1912 ; 14 I.C. 486.

— *S. 42—Judgment—Criminal case—Judgment and depositions inadmissible—Civil case.*

The judgment of a Criminal Court and the depositions of the witnesses therein are inadmissible in evidence in a Civil suit, to prove the liability of defendants. (Rattigan and Leslie Jones, JJ.)

Bishen Das *v.* Labhayya.—106 P.R. 1915 ; 187 P.W.R. 1915 ; 32 I.C. 18.

— *S. 42—Oral evidence—Acts and conduct of parties—Admissibility.*

Oral evidence as to the acts and conduct of the parties is admissible to show whether a certain deed is, as it purports to be,

EVIDENCE ACT, (I OF 1872), Ss. 43, 45, 46, and 47.

an out and out sale or a mortgage, but it is not admissible to show that a deed of sale was really meant to be a deed of mortgage and not a deed of sale—22 All. 149; 5 W. N. Cal. 326; 5 W. R. 68, *followed*. 12 All. 387; 14 All. 159; 4 Bom. 594; 10 Cal. 764; 9 Cal. 528; 13 Mad. 494; 16 Mad. 80; 19 All. 434; 25 Cal. 603; 2 W. N. Cal. 562; 7 Bom. 73; 6 Cal. 328; 17 Cal. 173 and 176, *referred to*. (Chatterji and Maude, JJ.)

Abdul Ghafur Khan *v.* Abdul Kadir.—72 P.R. 1901; 114 P.L.R. 1901.

——*S. 43 and 11—Finding as to adoption in a suit—Admissibility in another suit.*

Findings of fact in a case as to factum or validity of adoption are not evidence in another suit against persons who were not parties to the case in which the findings were given. (Johnstone, C. J.)

Arjan Singh *v.* Darbara Singh.—193 P.L.R. 1915; 140 P.W.R. 1915; 32 I.C. 312.

——*S. 43—Judgment in Criminal Court if admissible in civil case.*

The judgment of a criminal Court is inadmissible as a piece of evidence in a civil suit. (Rattigan and Leslie Jones, JJ.)

Bishen Das *v.* Ram Labhya.—106 P.R. 1915; 187 P.W.R. 1915; 32 I.C. 18.

——*S. 45 and 47—Handwriting expert—Conviction on evidence of.*

Held, that to base a conviction simply upon the opinion of an expert is, as a general rule, unsafe. It may be used to corroborate other evidence in itself sufficient for conviction.

Held, also, that the evidence of a witness supposed to be acquainted with the handwriting of a person is not admissible under section 47, Indian Evidence Act of 1872, where he does not state any of the facts which according to the explanation to this section would make his opinion relevant. So also where a witness as to identity of handwriting is not positive, his evidence is of no value.

Held, further, that in the present case the evidence of the expert (Mr. Hardless) is not sufficient to convict the accused either under sections 467 or 477, Indian Penal Code. (Shah Din, J.)

Jalal-ud-Din *v* Emperor.—18 P.W.R. 1912 Cr.; 147 P.L.R. 1912; 15 I.C. 979.

——*S. 46—Expert medical opinion—Post mortem examination.*

Expert medical opinion as to the *post mortem* appearances observed by the Surgeon who has conducted the *post mortem* examination, is relevant and where it differs from the opinion of the latter the benefit of doubt ought to be given to the accused. (Reid, C. J.)

Mehr Ilahi *v.* Emperor.—26 P.W.R. 1911 Cr.; 12 I.C. 93.

——*S. 47—Evidence of handwriting by persons acquainted with it—Admissible.*

The evidence of witnesses, though not experts within the meaning of section 45 of Act I of 1872, acquainted with a person's handwriting is admissible under section 47 of the said Act on the question

EVIDENCE ACT, (I OF 1872), Ss. 49, 54 and 57.

of the identification of the handwriting of that person. (Kensington, C. J. and Rattigan, Shadi Lal, JJ.)

First Grade Pleader, in the matter of —18 P.R. 1915 Cr.; 12 P.W.R. 1915 Cr.; 28 I.C. 722.

——*S. 49—Usages of any body of men—If covers inferences or conclusions.*

The words "usages of any body of men" in section 49 of the Evidence Act, do not cover the interferences or conclusions which village punchayats are wont to draw on the basis of their experience from the behaviour of alleged thieves under certain circumstances; and the opinion formed by the members of a *panchayat* as to the guilt of suspects when the latter decline to prove their innocence in the manner laid down by the *panchayat*, is not a relevant fact. Evidence as to admissions and promises made by alleged thieves before a *panchayat* is admissible without there being proof of the actual words used by the suspects before the *punchayat*. (Shah Din, J.)

Beja *v.* Emperor.—13 P.R. 1914 Cr.; 223 P.L.R. 1915; 26 I.C. 625.

— *S. 54—Confession obtained by inducement—Corroboration of approver and accomplice—Evidence of bad character when admissible.*

Held, (1) that a confession induced by promise of immunity from prosecution for a case, considered more serious by the accused, was inadmissible; (2) that evidence of bad character is irrelevant unless evidence of good character has been given; (*iii*) that where the evidence of the approver and accomplice had not been sufficiently corroborated, the conviction must be set aside. (Reid, C. J.)

Khallo *v.* The Crown.—12 P.W.R. 1907 Cr.

— *Ss. 54 and 167—Previous bad character—Relevancy of—Sufficiency of evidence excluding evidence objected to—Effect of.*

Held, that the fact that the accused had a bad character is not irrelevant under section 54 of the Indian Evidence Act when the evidence relating to it is not given for the purpose of showing that accused was a bad character and was therefore likely to commit offences of the kind of which he has been convicted.

Held, also, that under section 167 of the Evidence Act the improper admission of evidence is no ground for a new trial if it appears to the Court before which such objection is raised that independently of the evidence objected to and admitted there was sufficient evidence to justify the decision. (Rattigan, C.J. and Martineau, J.)

Daulat Ram *v.* Emperor.—2 Lah.L.J. 653; 59 I.C. 560.

——*S. 57—Matter of public history—Historical works, admissibility of.*

The question of title between the trustee of a mosque, though an old and historical institution, and a private person cannot be deemed a "matter of public history" within the meaning of section 57 on the Evidence Act and historical works cannot be used to establish title to such property. (Shadi Lal and Wilberforce, JJ.)

Farzand Ali *v.* Zafar Ali.—132 P.W.R. 1918; 46 I.C. 119.

EVIDENCE ACT, (I OF 1872), Ss. 65, 80 and 90.

——*S. 65—Evidence as to general result of accounts and documents.*

Held, that under section 65 cl. (*g*) of the Evidence Act evidence may be given as to the general result of documents when they consist of numerous accounts or other documents which cannot conveniently be examined in Court, and although it is one of the functions of the special *Kanungos*, who have recently been entertained to assist the Courts of law in the examination of the Revenue Records, to give evidence under that clause it is a complete abuse of their functions to require them to give oral evidence of the contents of a document such as the record of a *muafi* enquiry which ought to be examined in original by the Court itself. (Maynard, F.C.)

Gilani Shah *v.* *Mst.* Hassan.—2 Lah.L.J. 714.

——*S. 65—Promissory note—Scondary evidence—Loss of original not proved—Effect.*

In a suit based on a promissory note, secondary evidence of its existence and contents cannot be let in when the original itself has not been proved to be lost. (Broadway and Campbell, JJ.)

Ram Saran Das *v.* Tulsi Ram—1922 Lah. 417 ; 67 I.C. 565.

——*S. 65—Secondary evidence—Lost Bahi—Police report.*

Held, that where a bahi on which the suit is based is lost, the loss must be strictly proved and the Sub-Inspector's report is not a sufficient proof of such a loss.

Query. whether the police diary is admissible in evidence. (Wilberforce, J.)

Asa Ram *v.* Sukha Singh.—4 Lah. L.J. 416.

——*S. 65—Suit on lost bahi—Loss of bahi how proved—Police report.*

Held, that the police file of an alleged theft from the plaintiff's house and the statement of the Thanedar made in another case are inadmissible to prove the loss of bahi. (Wilberforce, J.)

Baru *v.* Sukha Singh.—4 Lah. L.J. 415.

——*S. 80—Applicability to depositions.*

Held, that section 80, Evidence Act, 1872, was applicable to the depositions of the accused persons made before the Commissioners. (Reid, J.)

Uttam Chand *v.* The Empress.—p. 63 P.L.R. 1900 Cr.

—— *S. 90—Ancient document—Presumption as to genuiness of, raised by first Court—Appellate Court not to easily upset conclusions of first Court.*

The question of making a presumption with regard to the genuineness of a document under S. 90 of the Evidence Act is one in which the Court has to exercise its discretion and when that direction has been exercised with due care and the presumption allowed by law has been made an appellate court should be slow to interfere with such discretion. (Chevis, J.)

Mahomed Usman *v.* Rahim Bakhsh.—57 P.W.R. 1918; 44 I.C. 559.

EVIDENCE ACT, (I OF 1872), S. 90.

——*S. 90—Documents—Thirty years old—To be accepted with care and caution—Question of genuineness of documents—Genuineness admitted and acted upon by third parties, effect of.*

Held, that it is for an appellant to show that the judgment appealed against is wrong. I.L.R. 29 Cal. 187 ; 29 I.A. 24 ; 4 Bom. L.R. 167 ; 12 M.L.J. 83 ; 6 C.W.N. 386, *followed.*

Held, also, that there is a very considerable danger in accepting, without care and caution, documents simply because they purport to be more than thirty years old.

Where in a dispute between the proprietors of a patti in a certain village and a body of non-proprietors, the question is as to the genuineness of a deed relating to the title of the land in dispute, the Court cannot lose sight of the fact that proprietors of another patti of the same village, many years ago, accepted the document and gave up a plot of land upon that basis and in consequence of their being satisfied that it was not forged. (Rattigan and Scott Smith, JJ.)

Ghulam Nabi *v.* Allah Din —241 P.L.R. 1913 ; 143 and 204 P.W.R. 1913 ; 19 I.C. 964.

——*S. 90—Presumption of genuineness—Document thirty years old.*

Where documents over 30 years old are tendered in evidence, the Courts in this country should act with caution in drawing any presumption as to their genuineness, and they should not accept a document merely because it is alleged to have been executed more than 30 years before suit. Before a Court is justified in making a presumption in favour of the genuineness of any such document, it shold be satisfied aliunde that there is good ground for accepting it as a true document. (Rattigan and Scott Smith, JJ.)

Jesa Lal *v. Mst.* Ganga Devi —81 P.R. 1913 ; 321 P.L.R. 1913 ; 211 P.W.R. 1913 ; 20 I C. 868.

——*S. 90—Presumption—Document thirty years old—Burden of proof.*

Held, that in this country presumption of genuineness under section 90 of the Indian Evidence Act, I of 1872, has to be applied with caution. A will can be disproved by circumstantial evidence. 82 P. R. 1902, *referred to* (Kensington and Rattigan, JJ.)

Mst. Gauhar Bibi *v.* Ghulam Muhammad.—82 P.L.R. 1909; 88 P.W.R. 1909; 4 I C. 923.

——*S. 90—Presumption—Document thirty years—Secondary evidence—Loss of original document.*

The words of section 90 of the Evidence Act do not limit the operation of the section to cases in which the document is actually produced in Court, and consequently secondary evidence of an ancient document is admissible without proof of the execution of the original when the document is shown to have been lost and to have been last heard of in proper custody. (Johnstone, J.)

Sawan Singh *v.* Karim Bakhsh.—93 P.R. 1910; 186 P.L.R. 1910; 128 P.W.R. 1910; 8 I.C. 353.

EVIDENCE ACT, (I OF 1872), S. 91.

—*S. 91—Applicability—Writing inadmissible.*

Held, that, if the terms of any contract have been reduced to writing and that writing is, for any reason, inadmissible, the promisee must lose his money. 16 I.C. 33, *dissented from*. (Le Rossignol and Wilberforce, JJ.)

Gurdas Mal Singh *v.* Ishar Das.—3 Lah. L.J. 157 ; 60 I.C. 107.

—*S. 91—Money advanced on Hundi—Hundi insufficiently stamped—Inadmissible in evidence—Rights of creditor.*

In a suit for recovery of money advanced on the security of a Hundi it was found that the Hundi was signed shortly after the money was actually paid. The Hundi was insufficiently stamped and therefore inadmissible under S. 35 of the Stamp Act, the plaintiff claimed to recover the money advanced irrespective of the Hundi. *Held*, that the loan was made on the security of the Hundi though the Hundi was actually executed later on, and the plaintiff had no cause of action independently of the Hundi. The Hundi was inadmissible in evidence under S. 35 of Stamp Act. S. 91 of the Evidence Act was a bar to the reception of secondary evidence and the plaintiff's suit was therefore unsustainable. 61 P.R. 1888 ; 42 P.R. 1895, *followed*. 16 I.C. 83, *distinguished*. (Chevis and Harris, JJ.)

Chanda Singh *v.* The Amritsar Banking Co.—2 Lah. 330 ; 1922 Lah. 307 ; 66 I.C. 201.

—*S. 91—Mortgage deed—Mutation entry of mortgage—Admission at mutation—Inadmissible in evidence—Admission of contract in pleadings—No necessity for further evidence in proof of contract—Expression of opinion by Court not necessary for decision of case—Value and weight of such opinion.*

A mortgage-deed requiring registration was un-registered, but effect was given to the mortgage in the revenue papers. The mutation entry, besides recording the parties as mortgagors and mortgagee, showed also the mortgagors to be in cultivating possession as the mortgagee's tenants.

Held, (1) that at mutation the land no doubt purported to have been leased to the mortgagor as a tenant, but no new mortgage was created, and the proceedings purported to give effect to the mortgage of the date of the deed ; (2) that as the terms of the mortgage in question were reduced to the form of a document, section 91 of the Evidence Act excluded all evidence in proof of the contract except the document itself. (3) that as evidence of an admission was evidence in proof of the contract, the admission at mutation could not be admitted in evidence. 3 N. W. P., H. C. R. 153; 9 M. 142 and 98 P. R. 1902; 18 P. L. R. 1903, *distinguished*.

If a defendant admits a contract in pleadings, the existence of the contract does not become a point in issue, and the question of admissibility of evidence would not come before the Court for decision.

EVIDENCE ACT, (I OF 1872), S. 91.

An expression of opinion by the Court, which is not necessary for the decision of the case, cannot be an authoritative ruling. (Rattigan and Beadon, JJ.)

Mst. Gujri *v.* Samandar Khan.—276 P L.R. 1913; 20 I.C. 280.

——*S. 91—Oral evidence of compulsorily registrable but unregistered deed.*

Where the lease recited as follows: "So long as Tajuddin occupies the shop the rent shall not be raised nor lowered nor shall I eject him but in case of his refusal to pay the rent I shall have to turn him out. Accordingly this kirayanama is written for record in case of need". *Held*, it was not a mere memorandum but was the agreement itself entered orally and then reduced to writing and being a lease not limited to a year was inadmissible in evidence if it were not registered and oral evidence could not be given thereof. (Chevis, A. C. J.)

Karim Bakhsh *v.* Natha Singh.—3 Lah.L.J. 14.

——*S. 91—Partition, award effecting award, loss of—Secondary evidence, admissibility of, to prove partition.*

Held, that where an award effecting partition is lost, there is nothing in section 91 of the Indian Evidence Act to prevent one of the parties from proving *aliunde* that a partition had taken place, but no secondary evidence of the details of such partition can be given. p. 459 P. L. R. 1900; 9 B. 50, *referred to.* 81 P. R. 1913; 134 P. L. R. 1914, *followed.* (Rattigan and Scott Smith, JJ.)

Sukh Dial *v.* Mani Ram.—29 P.R. 1915; 29 P.L.R. 1916; 27 I.C. 489.

——*Ss. 91 and 92—Relationship, proof of—Power of attorney, existence of—Extrensic evidence—Admissibility to prove relationship.*

There is no rule of law that the only evidence of an agent's authority admissible in evidence is a written power-of-attorney. The fact can be proved by evidence, *aliunde*, and so far as third parties are concerned, none-the-less so because the agent was appointed under a written document executed by the principal. There is nothing in section 91 or section 92 of the Evidence Act to preclude such third party from proving the existence of a particular relationship between the persons who respectively executed and accepted the power-of-attorney, though the terms which govern such relationship appear to be in writing. (Reid, C. J. and Rattigan, J.)

Lala Nanak Chand *v.* Muhammad Afzal.—33 P.R. 1913; 11 P.L.R. 1913; 279 P.W.R. 1912; 16 I.C. 950.

——*S. 91—Suit on document—Secondary evidence not admissible—Effect.*

The language of section 91 of the Evidence Act is clear and definite and wherever the terms of the contract are reduced to writing and that writing is, for any reason, inadmissible in evidence the promisee must lose his remedy, if independently of the document, he has no complete cause of action. (Broadway and Campbell, JJ.)

Ram Saran Das *v.* Tulsi Ram.—1922 Lah. 417; 67 I.C. 565.

EVIDENCE ACT, (I OF 1872), Ss. 91 and 92.

——*S. 91—Unregistered partition deed—Oral evidence.*

A partition may be proved by oral evidence though the partition deed cannot be proved for want of registration. (Abdul Raoof, J.)

Bishen Das *v.* Ram Singh.—61 I.C. 399.

— *S. 92—Oral evidence relating to documents—Sale—Mortgage.*

Held, that notwithstanding the provisions of section 92 of the Evidence Act, the defendants were entitled to show that a document purporting to be a deed of sale executed by them was intended to be a mortgage and not a sale. 72 P. R. 1901; S. C. 114 P.L.R. 1901, *followed*. (Chatterji and Kensington, JJ.)

Ram Sarup *v.* Allah Rakha.—107 P.L.R. 1905.

——*S. 92—Promissory note payable on demand—Oral agreement for a different mode of discharge, if can be proved.*

Where a promissory note is payable on demand, an oral agreement providing for a different mode of satisfaction is inadmissible in evidence. (Martineau and Abdul Qadir, JJ.)

Bharat National Bank *v.* Mohan Lal.—63 I.C. 748.

——*S. 92, Proviso (4)—Registered partition deed—Subsequent disposal of property mentioned therein—Oral evidence to prove it admissible.*

Where after the execution of the registered deed by the father, under which B, one of the sons, got certain property and all the rest was to remain with K, the father, with full powers of disposal, and the deed was signed by B, but no possession passed and sometime after K, applied to the revenue authorities for mutations of certain lands out of those reserved for himself, in the name of B, and later on disputes arose and the other brothers sought to prove that these lands had been given to be in exchange.

Held, that :—

(*Per Johnstone and Chatterji, JJ.*), that the question of the applicability of proviso (4) to section 92, Evidence Act, depends upon the mental attitude of the person making and accepting a subsequent transfer, inferred from all the surrounding circumstances. That section 92 (4) has no application if they act with the idea that the original disposition is final and definite, but section 92 (4) is in point, if they act under the idea of rectifying a mistake :

(*Per Johnstone, J.*)—that the alleged exchange was made to "modify" the original contract and therefore its evidence was inadmissible under section 92 (4).

Contra (*Per Chatterji and Rattigan, JJ.*), that the new alleged agreement was a subsequent insolated fresh transaction relating to a certain property alone, after title to it and other property had completely vested in B, and consequently that the agreement was not obnoxious to the provisions of section 92, proviso 4, it being concerned in effect with a new contract.

Bhagwan Singh *v.* Narain Singh.—129 P.W.R. 1908.

EVIDENCE ACT, (I OF 1872), Ss. 92, 93 and 94.

——*S. 92—Registered sale deed—Oral agreement to mortgage, if can be proved—Fraud, plea of, to be specifically pleaded.*

Held, that oral evidence cannot be given to show that the parties to a deed of sale intended the transaction to be one of mortgage and not of sale.

Held, also, that a party relying on fraud ought to allege it specially in the plaint. (Scott Smith and Shadi Lal, JJ.)

Ghaman *v.* Kanhya Mal.—121 P.L.R. 1915; 15 P.W.R. 1915; 26 I.C. 426.

——*S. 92—Scope of section—Admissibility of evidence between third parties.*

The prohibition in section 92 of the Evidence Act against going behind a written deed applies only to parties to a deed and not to outsiders. (Johnstone and Rattigan, JJ.)

Megha Ram *v.* Makhan Lal.—67 P.R. 1912; 126 P.L.R. 1912; 255 P.W.R. 1912; 13 I.C. 667.

——*S. 92 and 94—Subsequent conduct of parties admissible.*

Held, that evidence of conduct of parties to a document subsequent to its execution is admissible to show what the real meaning of the contract embodied in the document was or it may operate as an estoppel when it amounts to part performance of a contract. I. L. R. 4 Bom. 594; 72 P. R. 1901; s. c. 114 P. L. R. 1901; 22 All. 149: (P. C.), 5 W. R. 68, *referred to.*

The plaintiff sued on a promissory note for a certain amount with interest at the rate of two and a half per cent. per mensem. The defendant pleaded that it was not intended that interest should be charged on the sum stated in the pro-note but that the sum included advance interest and was all that had to be paid.

Held, that evidence of the kind mentioned was admissible to prove defendant's version of the transaction. (2) That the plaintiff had by his acts and omissions estopped himself from showing that the defendant's version was not true one. (Johnstone and Chevis, JJ.)

Bulaki Mal *v.* Mr. C.J. Floyed.—27 P.R. 1911; 191 P.L.R. 1911; 118 P.W.R. 1911; 10 I.C. 1004.

——*Ss. 93 and 94—Document—Construction of—Ambiguity—Oral evidence as to contents of document.*

The plaintiffs owning two wells—Naiwala and Shahwala in a single *khata* No. 3, consisting of 814 *kanals* 14 *marlas*, sold land out of the *khata* which they described as half of well Niawala, area 407 *kanals* 7 *marlas*, *i. e.*, half of the whole *khata*—No. 3, *jama* Rs. 12-3-0 (*i .e*, the *jama* of half well Naiwala alone) and putting the price at Rs. 2,500, they sold, in addition to the land the rights appurtenant to well Niawala, well Shahwala was not mentioned. They claimed possession of land of well Shahwala, on the allegation that the defendants had sued for pre-emption and got a decree for full half of the *khata*, *i. e.*, half of both wells and of the land attached to both and executed the decree and obtained mutation whithout their being impleaded a party to the suit while

EVIDENCE ACT, (I OF 1872), Ss. 101 to 108.

they had not sold any land of well Shahwala. The claim was dismissed on the ground that it amounted to a claim for rectification of a deed which could not be allowed under Section 31 of the Specific Relief Act, there being no mutual mistake about the terms of the deed and that the amount of the price was unimportant. Market price of the half khata was apprised by a local commissioner appointed by Court Rs. 4000.

Held, that the claim was not one for rectification of the deed and that the plaintiffs were entitled to a decree. (Johnstone, J.)

Ghulam Murtaza *v.* Fateh Shah.—130 P.L.R. 1910; 8 I.C. 554.

— *S. 101—Consideration—Deed formally registered.*

Where a document is formally registered and the receipt of consideration is recorded therein, the burden of proving the non-payment of consideration is on the person asserting the non-payment. But in the case of an account book, the onus lies on the person asserting payment. (Broadway and Abdul Qadir, JJ.)

Rulia Singh *v.* Tuni Mal.—60 I.C. 730.

— *S. 101—Minority—Pro-note—Suit on.*

Where in a claim on pro-note, the defendant sets up the plea of minority, the onus is on him to prove the same. (Le Rossignol, J.)

Harji Mal *v.* Abdul Halim.—60 I.C. 267.

— *Ss. 101, 102 and 103—Thumb-mark.*

Held, that it was the duty of the defendants who had admitted their liability for the payment of a certain sum of money by affixing their thumb-marks to an entry to that effect to prove the circumstances which would absolve them from the liability. (Shadi Lal, J.)

Ganda Ram *v.* Rehana.—3 Lah. L.J. 417; 64 I.C. 91.

— *Ss. 102 to 105—Mortgage—Admission before sub-Registrar as to receipt of consideration—Effect.*

The admission by a mortgagor, before the Sub-Registrar, that full consideration had been received threw the burden on the mortgagor to prove that it did not pass in full. (Broadway and Wilberforce, JJ.)

Ganga Ram *v.* Ralia.—2 Lah. 249.

— *S. 108—Presumption—Presumption that a person not heard of for seven years is dead—But not of precise period of death.*

Held, that although under section 108 of Act I of 1872 a person not heard of for 7 years is presumed to be dead when the question whether he is alive or dead is raised, but this presumption does not extend to the precise date of death which must be based upon actual proof to be adduced by the person seeking to establish the fact. 34 I. L. R. All. 36; 37 I. L. R. Cal. 103, *referred to.* (Shadi Lal, J.)

Basharat *v.* Najib Khan.—123 P.L.R. 1918; 38 P.R. 1918; 68 P.W.R. 1918; 45 I.C. 70.

EVIDENCE ACT, (I OF 1872), Ss. 108 and 112.

——*S. 108—Presumption of continuance of life.*

The presumption is in favour of the continuance of life and the onus of proving the death of a person lies on the party who asserts it. (Scott Smith and Leslie Jones, JJ.)

Tani *v.* Ritchiram —1 Lah. 554 ; 2 Lah. L.J. 481 ; 56 I.C. 742.

——*S. 112—Evidence—Legitimacy—Child born after marriage.*

Where it was contended that a boy born about 7½ months after the marriage of his mother must be considered as illegitimate.

Held, that the contention was not valid.

That the time which elapsed between marriage and birth is altogether immaterial for determining legitimacy. A child born during wedlock is presumed to be the legitimate issue, no matter how soon the birth be after marriage. (Kensington and Lal Chand, JJ.)

Umra *v.* Muhammad Hayat.—79 P R 1907 ; 194 P.L R. 1908.

——*S. 112—Legitimacy, presumption of—Child born during litigation for custody of wife—No proof of absolute non-access.*

A was the married wife of S. In April 1897, S. brought a criminal complaint under section 498, Penal Code, against one J. The complaint was dismissed under section 203, Criminal Procedure Code, on 17th April 1897. On 15th July 1897, S. brought a suit against J. and obtained an ex-parte decree on 15th January 1898, for custody of his wife A. On 24th May 1898, A. gave birth to a child at her parents' village and subsequently returned to S. and she and the child lived with S. till his death.

Held, that illegitimacy could not be positively inferred merely from the litigation above noticed.

In order to establish the illegitimacy of a person born during the continuance of a valid marriage between his mother and any man, it is necessary to show conclusively that the parties to the marriage had no access to each other at any time when he could have been begotten. (Rattigan and Beadon, JJ.)

Dalipa *v.* Rala.—49 P.L.R. 1914 ; 137 P.W.R. 1914 ; 22 I.C. 409.

——*S. 112—Legitimacy—Birth after seven months of marriage—Presumption—Mutation of names—Effect—Punjab Land Revenue Act, S. 44.*

A child born about seven months after the marriage of his father and mother is presumed to be the legitimate child of his parents unless it is shown that they had no opportunity of access to each other at a time when he could have been begotten of them. Where a mutation or names has been effected in favour of a person as the legitimate son of the previous lambardar the burden of proving the illegitimacy of the former will lie on the person affirming it. (Rattigan and Scott Smith, JJ.)

Mahbub Ali *v.* Taj Khan.—255 P.W.R. 1915 ; 26 I.C. 909.

EVIDENCE ACT, (I OF 1872), Ss. 112 and 114.

—*S. 112—Legitimacy—Presumption—Maintenance—Illegitimate children.*

Held, that the presumption, that children born of a married woman during the life-time of her husband are the legitimate offspring of that woman and her husband, is rebuttable and that it was rebutted by the plaintiffs in this case.

Illegitimate children are entitled to be maintained till they come of age from the estate of their natural father. (Robertson and Rattigan, JJ.)

Bahadur Singh *v.* Viru.—28 P.R. 1906.

—*S. 112—Legitimacy—Presumption—Proof.*

The presumption of legitimacy under S. 112 of a person born in wedlock is conclusively, unless displaced by cogent evidence of non-access. 29 C. 111 (P.C.) (1911) ; I.M.W.N. 312, *referred to.* (Shadi Lal and Broadway, JJ)

Bhagwant Singh *v.* Narinjan Singh.—56 P.W.R. 1917 ; 39 I.C. 29.

—*S. 112—Presumption under, if over rides, Mahomedan Law.*

Quaere : Whether the presumption as to legitimacy laid down by S. 112 of the Evidence Act overrides the peculiar provisions of the Mahomedan Law. (Rattigan and Scott Smith, JJ.)

Mahbub Ali *v.* Taj Khan.—255 P.W.R. 1915 ; 26 I.C. 969.

—*Ss. 114 and 133—Accomplice—Corroboration—Murder—Discrepancies between the statements of witnesses before the Police Court.*

Held, that it is an established principle of Law and practice that no accused can be convicted on the bare testimony of an accomplice unless it has been corroborated by independent reliable evidence in material particulars directly connecting the accused with commission of the crime. So where material discrepancies occur between the statements of the corroborating witnesses before the Police and their depositions in the Court, either of inquiry or trial, there is no corroboration and consequently the prosecution must fail. (Shah Din and Chevis, JJ.)

Amar Das *v.* Emperor.—36 P.W.R. 1910 Cr.; 8 I.C. 193.

—*S. 114—Accomplice—Corroboration of testimony—Blood marks.*

Held, that the discovery of blood in the convict's house and on his finger nails, and this suspicious conduct on the day of murder afford an ample corroboration of the approver's testimony so as to sustain a conviction. (Shadi Lal, C. J. and Moti Sagar, J.)

Ghulam Hussain *v.* Emperor.—4 Lah L.J. 405.

—*S. 114—Accomplice—Testimony of—Weight due to—Presumption.*

Held, that an approver's evidence is in itself tainted evidence though in some cases it may be worthy of belief for various reasons, but the uncorroborated statement of an approver taken at the end of trial is and must be of no value whatever. (Shadi Lal, C. J. and Wilberforce, J.)

Sunder Singh *v.* Emperor.—4 Lah. L J. 284.

EVIDENCE ACT, (I OF 1872), S. 114.

——*S. 114—Approver's evidence—Corroboration.*

To support a conviction on the statement of an approver especially of one whose initial statement was very long delayed, the statement requires material corroboration connecting each individual accused with the crime committed. (Harrison, J.)

Sardara *v.* Emperor.—63 I.C. 612.

——*S. 114—Contents of will, knowledge of—Presumption from execution.*

Execution of a will raises a presumption of knowledge of its contents. (Rattigan, J.)

Indar Narain *v.* Onkar Lal.—20 P.R. 1912 ; 233 P.W.R. 1911; 10 I.C. 130.

——*S. 114—Criminal Trial—Absconding of accused—No presumption of guilt.*

Held, that the mere fact that the accused has made a certain incriminating statement before several witnesses for the Prosecution and has produced in their presence one of the stolen articles from a field does not establish that he is one of the dacoits when other evidence against him is doubtful. (Rattigan and Beadon, JJ.)

Fatteh *v.* Emperor.—314 P.L.R. 1913 ; 31 P.W.R. 1913 Cr. ; 21 I.C. 473.

——*S. 114, Illustration (b)—Accomplice–Evidence—Corroboration–Several statements implicating same persons.*

Held, that in case where a large number of persons have been arrested by the Police and confessions are obtained one after the other, it is likely enough that those confessions should agree with each other, and each man would be likely to name as far as possible those persons who have already been named in the previous confessions. The fact of any particular person having been named in the confession of more than one of the co-accused cannot, therefore, be regarded as sufficiently reliable corroboration of the statement of the approver. In such a case, each person accused is entitled to claim that as against him the statement of the approver should be corroborated by some reliable evidence. (Chevis, J.)

Lala *v.* Emperor.—34 P.L.R. 1922; 65 I.C. 622.

——*Ss. 114, Illustration (b) and 133—Accomplice—Evidence of—Corroboration—Necessity for.*

Held, that section 133 of the Evidence Act contains the rule of law regarding the testimony of accomplices, and section 114, illustration (*b*) is merely a guide to assist the Court, though in a vast majority of cases prudence requires that there shall be corroboration. No hard and fast rule can, however, be laid down to regulate the extent and nature of such corroboration, this being dependent entirely, on the circumstances of each case. 2 P. R. 1917; 17 P. R. 1915 Cr., *approved*. 14 P. R. 1894 Cr.; 35 M. 247, *referred to*. (Scott Smith and Broadway, JJ.)

Narain Das *v.* Emperor.—3 Lah. 144; 4 Lah.L.J. 91; 1922 Lah. 1; 68 I.C. 113.

EVIDENCE ACT, (I OF 1872), S. 114 (*b*).

——*S. 114, Illustration (b)—Accomplice—Who is—Persons taking part in negotiations for bringing a public servant—Value of evidence of.*

Persons present when money is given to a bribe taker cannot be accomplices but the case is different if they have co-operated in the payment of the bribe or taken some part in the negotiation for its payment. 33 Cal. 649, *followed*. In the latter case they could not be regarded as independent witnesses and their evidence is not free from taint. (Broadway, J.)

Khadam Ali *v.* Emperor.—15 P.W.R. 1919 Cr.; 50 I.C. 18.

——*S. 114, Illustration (b)—Accomplice—Evidence of—Weight due to—Corroboration.*

An approver's evidence is in itself tainted evidence though in some cases it may be worthy of belief for various reasons, but the uncorroborated statement of an approver taken at the end of the trial is of no value whatever.

Statements of witnesses extorted by the Police under threats of implication in the crime cannot fail to detract from the value of their evidence, especially where they had no reason for refraining from deposing against the culprits. (Shadi Lal and Wilberforce, JJ.)

Sundar Singh *v.* Emperor.—105 P.L.R. 1920; 56 I.C. 667.

——*S. 114, Illustration (b)—Approver's evidence–Corroboration in material particulars necessary.*

Held, that evidence of an approver should not be believed without its material corroboration; and in order to see whether there is such a corroboration it is the duty of the Courts to scrutinize and marshall out very carefully the proof relating thereto; and that where this duty has not been properly performed by the Lower Courts' the High Court can interfere on the Revision side and should set aside even the concurrent finding of the two Courts below if such a proof is found defective. (Williams, J.)

Manna *v.* Emperor.—3 P.W.R. 1911 Cr.; 9 I.C. 232.

——*S. 114, Illustration (b)—Accomplice—Corroboration—Father and brother.*

It is an established principal of law that it is not safe to convict an accused person on the uncorroborated testimony of an accomplice. The corroboration should be by reliable witnesses. The mere fact of the witness being father or brother of the accused is not sufficient. (Reid, C.J. and Ryves, J.)

Hira *v.* Emperor.—19 P.L.R. 1911; 1 P.W.R. 1911 Cr.; 9 I.C. 39.

——*S 114, Illustration (b)—Approver, evidence of, to be corroborated, materially—What is corroboration.*

Held, that there should be direct and material corroboration of an approver's statement. So where the charge is that he and his companions made preparation to commit dacoity and actually assembled together at various places for that purpose, the evidence that they preached sedition and excited the populace to mutiny does in no way corroborate his statement, though their doing so was illegal.

EVIDENCE ACT, (I OF 1872), S. 114 (*b*) and (*e*).

Held, also, that the evidence tending to show that the co-accused or some of them were seen in the company of the approver at or in the vicinity of the places at which, he says, dacoities were to be committed, is not sufficient corroboration in support of his statement. (Rattigan, J.)

Waryam Singh *v.* The Crown.—2 P.W.R. 1916 Cr. ; 32 I.C. 843.

——*S. 114, Illustration (b) and S. 133—Approver, evidence of—Corroboration in mateiral particulars.*

Held, that courts should not ordinarily depart from the well recognized practice of accepting the evidence of an approver as against an accused person only when it is corroborated in material particulars by other independent evidence. It is the more necessary to follow this rule where the accused belong to a low class and it is a matter of no difficulty for the approver to include the name of any person of that class among the offenders even though he had no connection with the offence and it might be difficult for him to establish his innocence.

Held, also, that in exceptional cases the Courts might, for reasons stated, act upon the evidence of an approver as a whole, though uncorroborated in particular details by independent evidence but this is not such a case. 11 P. W. R. 1915 Cr ; 17 P. R. 1915 Cr. ; 28 Ind. Cas. 738; 16 Cr. L. J. 354, *referred to.* (Rattigan and Chevis, JJ.)

Ghulam Rasul *v.* Emperor.—31 P.W.R. 1916 Cr. ; 34 I.C. 332.

——*S. 114, Illustration (b)—Retracted confession—Statement of approver—Evidentiary value of.*

The retracted confession of an accused person may be sufficient corroboration of the approver's story as against himself but not against a co-accused. (Rattigan, C. J. and Martineau, J.)

Palla *v.* Emperor.—12 P.W.R. 1919 Cr. ; 49 I.C. 604.

——*S. 114, Illustration (e)—Identification parade—Presumption of regularity of.*

Held, that no doubt it has to be presumed under section 114 of the Evidence Act that every official act is properly performed, but this presumption is hardly sufficient to satisfy a Court that such precautions have been taken as to render an identification truly valuable, for instance, it depends very largely on whether 30 men or 3 are added to the accused and whether care is taken to see that all are similarily dressed and that there is no possibility of witnesses being able to select the accused by any possible means of identification. (Harrison, J.)

Kallu *v.* Emperor.—4 Lah.L.J. 448; 1922 Lah. 31; 67 I.C. 721.

——*S. 114, Illustration (e)—Judgment silent on point raised in the memo. of appeal—Presumption.*

Where an appellate judgment is silent on a point which is specially mentioned in the grounds of appeal, the interference can be drawn that it was given up. To hold otherwise would be to

EVIDENCE ACT, (I OF 1872), Ss. 114 (*g*) and 115.

contravene section 114 and to presume that the court failed to do its duty. (Abdul Raoof, J.)

Abdul Karim *v.* Thakar Ram Jaggu Ram.—68 I.C. 740.

——*S. 114, Illustration (g)—Accounts—Non-production of.*

Non-production of account books by a party, found to have been in possession thereof, raises a strong presumption that had they been produced the evidence to be gathered therefrom would have been unfavourable to him. (Shah Din and Scott Smith, JJ.)

Sham Das *v.* Pohlo Ram.—16 P.L.R. 1912 Sup ; 18 P.W.R. 1913; 18 I.C. 604.

——*S. 115—Acquiescence—Party brought on record not objected to.*

Where on the plaintiff's death certain persons are brought on record as his legal representatives and the defendant raises no objection thereto, he cannot afterwards contend that they are not his legal representatives. (Martineau, J.)

Tej Bhan *v.* Wali Dad —3 Lah.L.J. 181; 60 I.C. 716.

——*S. 115—Admission—Admission by opposite party.*

If a party is fully aware of his position, an admission of the opposite party which does not in any way influence the beliefs or actions of the former does not operate as estoppel against the party making the admission. (Leslie Jones and Broadway, JJ.)

Mehra *v.* Devi Ditta Mal.—2 Lah. 88; 3 Lah.L.J. 223; 62 I.C. 665.

——*S. 115—Applicability—Minor—Estoppel as to plea of minority.*

"Person" in section 115 of the Act does not exclude an infant. Where there have been no misrepresentation by a minor as to his age or where the misrepresentation have not, in fact misled the opposite party there can be no estoppel and infancy can be pleaded but where the opposite party has been misled by such misrepresentation the plea of minority cannot be heard. 25 C. 371, *followed*. (Chevis, A. C. J. and Le Rossignol, J.)

Wasinda Ram *v.* Sita Ram.—1 Lah. 389; 51 P.W.R. 1920; 59 I.C. 393.

——*S. 115—Estoppel.*

In a suit for pre-emption in respect of a sale effected in June 1897 it was contended on behalf of the pre-emptor that the vendee held no lands which gave him the right of suit having previously parted with all his land and that he was estopped under Section 115 of the Evidence Act from showing that he held any such lands by an allegation made by him in a written statement filed on the 7th January 1897 in a suit for pre-emption instituted by another person against him as vendee of certain land.

Held, that Section 115 of the Evidence Act was not applicable until it was established that the vendee intentionally caused or permitted the pre-emptor to believe that he had no lands

EVIDENCE ACT, (I OF 1872), S. 115.

on the date he filed the written statement and that in consequence of that belief the pre-emptor forebore to sue for pre-emption in respect of the land. (Reid, J.)

Muhammadi *v.* Gokal Chand —26 P.L.R. 1903.

——*S. 115—Estoppel—Acquiescence—Sale by one of three brothers—Others standing by—Vendee raising buildings.*

Where a property belonging to three brothers, is sold by one to a stranger who erects costly buildings upon it to the knowledge of all the three and the other two stand by it for a long time, they are estopped, from contending that one of them had no right to sell without their consent. (Broadway and Harrison, JJ.)

Dhanpat Rai *v.* Guranditta.—2 Lah. 258.

——*Ss. 115 and 116—Estoppel—Landlord and tenant—Tenant estoped from denying title of landlord.*

Section 116 of the Evidence Act estops tenant from denying the title of his landlord in a a suit for rent by the former, landlord in whose favour the tenant has executed a lease. (Rattigan, J.)

Bogar *v.* Karam Singh.—141 P.R. 1906; 96 P.L.R. 1907; 13 P.W.R. 1907.

——*S. 115—Minor, false representation by—Truth known to both parties—Effect.*

A false representation made to a person who knows it to be false is not such a fraud as to take away the privilege of infancy. There can be no estoppel where the truth of the matter is known to both the parties. (Abdul Raoof, J.)

Harnam Singh *v.* Maraina.—66 P.W.R. 1921.

——*S. 115—Minor—Representation as to age.*

If a minor obtains a loan on the representation that he is of age, he cannot plead his infancy as defence to a suit on the loan. (Le Rossignol, J.)

Harji Mal *v.* Abdui Halim.—60 I.C. 267.

——*S. 115—Nature of Estoppel—Change of position to be proved.*

A statement relied upon as constituting estoppel, must be proved to cause change in position of the party setting up the estoppel ; a statement which does not amount to an estoppel, may be admissible in evidence. (Leslie Jones and Moti Sagar, JJ.)

Abdulla *v* Fateh Mahomed.—62 I.C. 809.

——*S. 115—None if truth known—Dealing with an agent after principal's death.*

Where a person enters into a contract with an agent after the principal's death, with the knowledge of the facts, cannot challenge it subsequently on the ground of want of authority. (Broadway and Abdul Raoof, JJ.)

Musaji Ahmed & Co. *v.* Adminstrator General, Bengal — 60 I.C. 739.

EVIDENCE ACT, (I OF 1872), Ss. 115 and 116.

— *S. 115 – Representation.*

Where a mortgagee informs an intending vendee of the exact amount due on his mortgage on enquiry by the latter who acting on that information retains the amount out of the purchase-money for paying off the mortgage the mortgagee is estopped from claiming any larger amount from the vendee. (Scott Smith and Leslie Jones, JJ.)

Secretary, Chief Khalsa Dewan *v.* Punjab National Bank.—141 P.W.R. 1919; 3 Lah.L.J. 274; 55 I.C. 492.

——*S. 115—"Thing"—Estoppel—Essentials.*

A mere view or opinion on the legal effect of an adoption is not a thing within the meaning of section 115 of the Evidence Act. In order to give rise to an estoppel it is necessary that the representation should be the actual cause of a new belief in the mind of the other party and of his action following on that belief. Estoppel does not arise where both parties have equal means of knowledge both of the facts and of the law. (Johnstone, and Rattigan, JJ.)

Tek Chand *v.* Gopal Devi.—46 P.R 1912; 127 P.L.R 1912; 180 P.W.R. 1912; 15 I.C. 482.

——*S. 116—Landlord in possession—Lease term expired—Rights of lessee.*

A lessee whose lease has expired cannot evict the landlord legally in possession of the property although the landlord was let into possession by the *quondam* tenant. A tenant cannot deny even a defective title of the lessor without openly surrendering the land to him. (Le Rossignol and Wilberforce, JJ.)

Muhamad Mamtaz Hussain *v.* Naurang Ahmed.—60 I.C. 502.

——*S. 116—Landlord and Tenant—Denial of title—Duty to surrender possession.*

A tenant in possession cannot, even after the expiration of his lease deny his landlord's title without actually and openly surrendering possession to him. Once the relationship of landlord and tenant is established the tenant must surrender possession before he can set up a claim to be the real owner. 123 P. R. 1919, *followed.* (Broadway, J.)

Allah Bakhsh *v.* Lal Khan.—67 I.C. 269.

——*S. 116—Landlord and Tenant—Tenant in possession after extinction of tenancy if can deny landlord's title—Tenant not put into possession.*

A tenant in possession cannot, even after the expiration of the tenancy deny his landlord's title without actually and openly surrendering possession to him. 35 I. C. 7; 24 C. L. J. 103; 23 C. W. N. 1335; 33 I. C. 97; 37 All. 557, *followed.*

A tenant who has executed a lease but has not been let into possession by the lessor, is estopped from denying his lessor's title in the absence of proof that he executed the lease in ignorance of the defect in his lessor's title or that his execution of the lease was procured by fraud, misrepresentation or co-ercion. 7 C. W. N. 506, *followed.* (Martineau, J.)

Makham Singh *v.* Baisakhi Ramshah.—123 P.R. 1919; 150 I.C. 591.

EVIDENCE ACT, (I OF 1872), Ss. 120 and 122.

——*Ss. 120 and 132—Suit for dissolution of marriage on the ground of adultery—Rights of parties as to discovery of documents—Parties not compellable witnesses.*

In a suit for dissolution of marriage under the Divorce Act on the ground of adultery by the wife, the respondent and co-respondent are competent witnesses, but cannot be compelled to give evidence unless they offer themselves as witnesses.

A list of documents proving adultery should be filed with the plaint, and when it is not done the petitioner may be ordered to file an affidavit disclosing all letters in his possession or power relating to the adultery charged on which he relies. (Reid, J)

C. *v.* C. and B.—11 P.R. 1902.

——*S. 122—Communication between husband and wife—Consent.*

Held, that :—

1. Under section 122 of the Evidence Act, no communication between husband and wife can be di closed by the one against the other without consent of the party concerned. The consent cannot be implied. It is incumbent upon the Court to ask the party against whom the evidence is to be given whether he or she would consent to the evidence being given, and not to admit it unless such consent is given. 10 B. H. C. 497, *referred to.*

2. Where it is sought to prove an offence on circumstantial evidence only, there must be a chain of evidence, or series of established facts so far complete as to leave no reasonable ground for a conclusion therefrom consistent with the innocence of the accused. (Scott Smith and Agnew, JJ.)

Bishen Das *v.* Emperor.—27 P.R. 1913 Cr.; 244 P.L.R. 1913; 44 P.W.R. 1913 Cr. ; 19 I.C. 1004.

——*S. 122—Crime committed against the other—Wife charged with murder of step-son—Confession to husband—Admissibility—Confession while in police custody.*

In this case F, wife of A, was convicted of murdering her step-son on the strength of a confession by her to her husband and the pointing out by her to him alone of the body of the step-son floating in a pond. *Held*, that such evidence is not admissible, as the crime was not committed by the wife against the husband within the meaning of section 122, Evidence Act. 24 P. W. R. 1913 Cr., *referred to.*

An offence 'against' a person is an offence calculated to injure his person or property or reputation, as in cases of defamation, and does not include an offence against a son, though such offence may cause to the father grief in mind.

A confession by a woman in police custody, to which she had been relegated by her own husband and to which she was remanded after the confession was made, is of little value, when the confession is retracted only five days later before the same Magistrate. 18 A. 78, *referred to.* (Johnstone and Beadon, JJ.)

Mst. Fatima *v.* Crown.—10 P.R. 1914 Cr.; 261 P.L.R. 1914; 25 I.C. 525.

EVIDENCE ACT, (I OF 1872), Ss. 122 and 133.

—*S. 122—Statement by accused's husband to wife.*

Held, that, statements alleged by the wife of an accused person to have been made to her in respect of the offence with which he is charged, without the accused or his representative-in-interest consenting to these statements being disclosed, are inadmissible under section 122 of the Indian Evidence Act. (Reid, C.J. and Beadon, J.)

Milkhi *v.* Emperor.—218 P.L.R. 1913; 24 P.W.R. 1913 (Cr.); 19 I.C. 705.

—*S. 133—Accomplice—Statement of—Corroboration, necessity for—What is corroboration.*

Held, that the approver may be telling the truth and it is quite probable that he himself had a hand in the murder, but his statement as to who his accomplices were must be corroborated by reliable evidence before it can form the basis of a conviction.

Held, also, that the corroboration offered in this case is the statement of two men who apparently knew something about the matter from the very beginning but refused to make any statement until the third day of the police investigation. The delay may be due to their reluctance to implicate the accused after they had promised not to give information, but it is obvious that statements obtained after such a long delay must be regarded with suspicion; and these witnesses may possibly be screening themselves at the expenses of innocent men.

Held, further, that even if these witnesses bear no enmity to the appellants and are related to them the long delay in making their statements makes their evidence liable to grave suspicion. (Chevis, C J. and Le Rossignol, J.)

Fatta *v.* Emperor.—2 Lah L.J. 296; 67 I.C. 928 (2).

—*Ss. 133 and 114, Illustration (b)—Approver—Evidence—Corroboration.*

Held, that an approver's evidence cannot be accepted unless it is corroborated in material particulars by other and independent evidence. (Robertson and Rattigan, JJ.)

Lal Khan *v.* Emperor.—11 P. L. R. 1912; 19 P.W.R. 1912 Cr.; 13 I.C. 998.

—*S. 133—Corroboration, what is—Evidence as against a third accused.*

Confession of one accused cannot be said to be corroborated by the confession of another as against a third accused who has not confessed at all. But between the first two, the confession of one may be said to be corroborated by the confession of the second and *vice versa*. 38 Bom. 156, *distinguished*. (Scott Smith and Lindsay, JJ.)

Ganga Ram *v.* Emperor.—60 I.C. 786.

—*S. 133—Evidence of approver—Corroboration of.*

It is only under very exceptional circumstances that a conviction based only on the uncorroborated evidence of an accomplice could be sustained.

The corroboration of an accomplice must be on a point material to the issue, it must be on some material circumstance, such circumstance connecting and indentifying the accused with the offence.

EVIDENCE ACT, (I OF 1872), S. 155.

When the offence under Section 457 of the Indian Penal Code, with which the accused were charged, was committed about midnight, and the corroborative evidence was to the effect that the accused and the accomplice were seen together during the day preceding the crime and together near the spot about sunset, *held*, that the corroborative evidence did not directly connect the accused with the offence and was no corroboration of any part of the story regarding the actual crime. The accused were accordingly acquitted. (Robertson, J.)

Wazir Khan *v.* The Crown.—5 P.R. 1902 Cr. ; 57 P.L.R. 1902.

——*S. 155—Previous statement—Not admissible unless put to witness.*

Under section 155 of the Evidence Act, I of 1872, a witness cannot be contradicted by his previous statement if his attention has not been drawn to it as required by section 145 of the said Act. (Johnstone and Shah Din, JJ.)

Mst. Amir Begam *v. Mst.* Begam.—127 P.L.R. 1914; 9 P.W.R. 1914; 22 I.C. 861.

EXCHANGE.

——*Immoveable property over Rs. 100 in value—Sonless proprietor—Unregistered deed—Decree on admission of widow—Reversioner's right to challenge—Custom.*

A sonless landowner executed a deed of exchange of ancestral holding of the value of more than Rs. 100 but it was not registered. On his death a decree on its strength was passed on admission of his widow.

Held, that the reversioners of her husband could challenge the decree by filing a declaratory suit.

Held, also that the exchange was inadmissible in evidence for want of registration, and the decree obtained thereon on the admission of the widow could not affect the rights of the reversioners, whether the exchange was for necessity or not. (Johnstone, J.)

Dalip Singh *v.* Munshi.—176 P.L.R. 1914; 74 P.W.R. 1914; 24 I.C. 894.

——*Property belonging to a community for property exchanged in the name of some people—Presumption of ownership of newly acquired property—Joint property—Nature of evidence to show possession by individual members.*

Takia-i-Khisht Faroshan outside the Shahalmi Gate, Lahore, is the joint property of the brotherhood of the *Kashmiri* brick-sellers of Lahore and such members of the brotherhood as are not in its actual possession are entitled to obtain a declaration that it is their joint property and can call upon the other members who are in its actual possession to render to them accounts of the income derived from the said *Takia* and the land attached thereto. In such a case each individual member is not bound to adduce strict proof of his title to such property by the exercise of definite and overt acts of ownership in respect of it. All the members should be

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presumed to be in joint possession as co-sharers unless and until it is proved by clear and unequivocal evidence that their right of use has been expressly and continuously denied for 12 years by the members in actual possession of such property. The cause of action in such a case arises when the plaintiffs' rights are invaded by some overt act. (Johnstone and Shah Din, JJ.)

Amir Begam *v. Mst.* Begam.—127 P.L.R. 1914; 9 P.W.R. 1914; 22 I.C. 861.

EXCISE ACT, (XII OF 1896), Ss. 3, 20 and 21.

——*Foreign liquor—Importation of its small quantity for private consumption illegal.*

Held, that section 46 (1) (c) makes the importation of any quantity of foreign spirits "illegal, however small."

Where accused had gone on some business to a Native State, and there purchased one bottle of liquor for private purposes, and had drunk a portion, and returned to his house with the balance, *held*, that the accused had committed an offence, although the quantity did not exceed that which a person is permitted to possess. (Robertson, J.)

Sher Singh *v.* The Crown.—14 P.R. 1907 Cr.; 41 P.W.R. 1907 Cr.

——*Ss. 3 (1) (i) and 51—Possession—'Spirit.'*

It appeared that 1 seer $11\frac{3}{4}$ chittacks of liquor was found in the house of the accused where his son and wife also resided. He was convicted of the offence under section 51 of the Excise Act, but the Sessions Judge acquitted him holding that if the possession of the liquor was proved to be joint possession of father and son the quantity in possession of each was not over 1 seer per head and as the liquor had been added to by the boiling over of the lahan employed in the distillation, it could not be asserted by the prosecution that there was more than a seer of country spirit in the whole mixture of spirit and lahan.

Held, following 13 P.R. 1897 Cr. that on the facts disclosed the possession must be deemed to be that of the accused, the owner of the house and the head of the family, the presence of the son who was 17 years of age made no difference.

Held, also, that the whole of the liquor must be deemed to be country spirit, that accidental admixture being a negligible element, as the whole was a 'liquor containing alcohol obtained by distillation within the definition of 'spirit' in section 3 (1) (i) of the Excise Act. (Clark, C. J. and Harris, J.)

Queen Empress *v.* Mazir Singh.—10 P.R. 1901 Cr.

——*Ss. 20, 21, 49—Sale of shares in the hands of excise authorities to unlicensed persons—Sale, meaning of.*

Held, that for the purposes of the Excise Act XII of 1896 sale of intoxicating drug is not complete until delivery thereof to the purchaser or some one on his behalf, consequently a licensed vendor who holds a "sale-in-bond" charas license does not break, under

EXCISE ACT, (XII OF 1896), Ss. 30, 36 and 37.

section 21 of the Excise Act, the condition of his license and is not liable to be prosecuted under its S. 49 by selling the charas in bond in the hands of the Excise Authorities to an unlicensed person who cannot take delivery until he takes out a license. (Reid, C. J.)

Dhanpat *v.* Emperor.—89 P.L.R. 1911 ; 5 P.W.R. 1911 Cr. ; 4 P.R. 1911 Cr. ; 10 I.C. 682.

—— *Ss. 30, 51, 52—Liquor—Possession of liquor in excess of quantity specified in license.*

Section 30 of Act XII of 1896, forbids the possession of any quantity of liquor larger than that specified in Section 3 (1) (*n*) unless the possessor is permitted to manufacture or sell the same or holds a pass therefore.

A licensee may possess liquor in excess of the amount specified in Section 3 (1) (*n*) and up to the amount specified in his license or pass. If he is in possession of more than the latter quantity, he is punishable under Section 51 of the Act.

Section 52 provides a penalty for certain offences not punishable by Section 51 or any other section of the Act. (Reid, C. J.)

Mangal Singh *v.* The Crown.—21 P.R. 1910 Cr. ; 155 P.L.R. 1910 ; 7 I.C. 491.

—— *Ss. 36, 38, 45 and 47—Absence of complaint—Police report.*

Held, that a Magistrate is competent to take cognizance of an offence under section 45, Act XII of 1896, on the chalan of a Deputy Inspector of Police under section 190 (*b*) Criminal Procedure Code under Punjab Government Notification No. 735½, dated 26th March 1885, which under section 2 (2) of the Act is still in force Deputy Inspectors of Police are Excise officers with powers under section 36 and 38 of the Excise Act XII of 1896. 9 P.R. 1897, Cr. *distinguished*. 22 P.R. of 1900 Cr. ; 15 P.R. 1887 Cr. 4 P.R. 1893 Cr., *followed*. (Reid and Harris, JJ.)

The Empress of India *v.* Sundar Singh.—8 P.R. 1901 Cr. ; 76 P.L.R. 1901.

—— *Ss. 37 and 41—Charas. Possession of, in contravention of rules—Jurisdiction of Magistrate—Report—Complaint.*

The accused was convicted for being in possession in contravention of rules of 'Charas' under section 48 of Act XII of 1896. He was arrested by a Sergeant of Police, who reported the case at the Police Station. The case was investigated by a Sergeant of Police attached to the Police Station, who challaned the accused on the third day after his arrest to the District Magistrate, through the District Superintendent of Police. The District Magistrate made the case over for trial to one of the Magistrate subordinate to him. The order sending the case for trial only bore the initials of the District Magistrate without any designation of his office.

It was contended for the accused that the Magistrate was not competent to try the case, as there was no complaint or report of the Collector or an Excise officer to give the Magistrate jurisdiction.

Held, that the contention was not valid. As the District Magistrate was the same individual as the Collector, and as the case

EXCISE ACT, (XII OF 1896), Ss. 44, 45 and 49.

would be reported to him in the same way by the Police, whether as District Magistrate or Collector, it would be reasonable to hold that the order was passed by him in his capacity of Collector, as well as in his capacity of District Magistrate, and that the Magistrate had jurisdiction to try the accused.

Held, further, that the Magistrate had jurisdiction under section 41 of Act XII of 1896.—8 P. R. 1901 Cr. ; s. c. 76 P. L. R. 1901; I. L. R. 20 All. 70; 22 P. R. 1900 Cr.; s. c 46 P. L. R. 1901, *referred to*. (Clark, C.J.)

Motan Das *v.* The Emperor.—9 P.R. 1903 Cr.; 103 P.L.R. 1903.

—*Ss. 44, 49, 52 and 57—Complaint by Police Officer.*

A Police Officer who has been invested under Section 44 of the Excise Act (XII of 1896) with the powers conferred upon Excise Officers by Sections 36, 37 and 38 of the Act, is not an Excise Officer within the Meaning of Section 57, so as to be competent to make a complaint of, or report on, an offence punishable under Section 49 or 52 of the Act. 9 P. R. 1897 Cr, *followed*. 22 P. R. 1900 Cr.; s. c. 46 P. L R. 1901, *referred to*. (Shah Din and Williams, JJ.)

The Crown *v.* Nirdar Singh.—13 P.R. 1910 Cr.; 181 P.L.R. 1910; 27 P.W.R. 1910 Cr. ; 6 I.C. 717.

— *Ss. 44 and 57—Excise officer—Police officer—Notification by Local Government under, S. 44.*

Under the notifications of the Local Government made under S. 44 of the Excise Act, a Sub-Inspector of Police is an Excise Officer for all purposes connected with the excise power conferred on Excise Officers by Ss. 36, 37 and 38 of the Act. And a Police officer invested with powers of an Excise Officer under S. 44, is to be deemed also an Excise Officer for the purposes of S. 57. (Rattigan and Chevis, JJ.)

Crown *v.* Shibban.—138 P.L.R. 1914 ; 2 P.R. 1914 Cr. ; 23 I.C. 688.

— *Ss. 45 and 51—Emptying a vessel containing lahan—Evidence of general repute not admissible.*

Held, (1) that the evidence of general repute as habitual seller of illicit liquor was inadmissible ; (2) that emptying a vessel containing lahan was not sufficient for conviction under Ss. 45, and 51 of the Excise Act, where the implements were found in the house of another person and everything that happened took place on that premises. (Chitty, J.)

Bhagat Singh *v.* Crown.—2 P.W.R. 1907 Cr.

— *S. 49—Liquor, Sale of—License. Breach of conditions of—Abetment.*

Held, that the accused, who had purchased liquor for a British soldier from a licensed vendor in contravention of a condition of the vendor's license was guilty of abetment of the breach of the condition, though the vendor himself, having no guilty knowledge or intention, committed no offence. (Kensington and Johnstone, JJ.)

Emperor *v.* Makhtar Khan.—55 P.R. 1905 Cr. ; 201 P.L.R. 1905.

EXCISE ACT, (XII OF 1896), Ss. 49 and 51.

——*S. 49—Sale of medicine containing brandy.*

A medical practitioner who puts a little brandy into one of the medicines prescribed and sold by him to a patient, does not thereby sell brandy and contravene the provisions of the Excise Law. (Scott Smith, J.)

Emperor *v.* Bhagwan Das.—33 P.R. 1914 Cr.; 224 P.L.R. 1915 ; 27 I.C. 842.

——*S. 51—Articles of distillation found in place outside village accessible to all—Owner of place if guilty—Criminal Procedure Code, Section 439 —Concurrent findings practice.*

The finding of articles suggesting illict distillation in a place easily accessible, such as an ordinary cattle-shed, which usually remains open and is situate out-side the village, is not sufficient for convicting the owner of the shed under section 51 of Act XII of 1896, particularly where the search was made at the instigation of that person's enemy, and no other incriminating article was found in any part of his dwelling house.

In case of doubt, even the concurrent findings of the Courts below are liable to be set aside on revision under section 439, Criminal Procedure Code, 1898. (Kensington, J.)

Wasakhi *v.* Emperor.—98 P.L.R. 1914; 43 P.W.R. 1913 Cr.; 22 I.C. 752.

EXCISE ACT, I OF 1914.

——*S. 61—Excise cases—Sentence—Consideration.*

In awarding sentences in excise cases Court should have in view the consideration which is of very great importance that illicit distillation results in not only a loss of excise revenue, but also in drukenness and crime. In view of the demoralising influence of a sojourn in jail on the character of a person who in other respects is law abiding a heavy sentence of fine will be preferable to a sentence of imprisonment in most cases of a first conviction for infraction of an excise law. The inposition of petty fines will serve no good purpose, but will rather arouse the gambling instinct.

Under the peculiar circumstances of the case where the offender who was an old man about 70 years of age kept wat of lahan not for his own use, but on behalf of another, the Chief Court on revision further reduced the sentence passed on him on appeal under section 61 (1) (C) of Act I of 1914, of three months' simple imprisonment and Rs. 100 fine to the imprisonment already undergone *viz.*, 5 weeks' and a fine of Rs. 150. (Le Rossignol, J.)

Lehna Singh *v.* The Crown.—63 P.L.R. 1916 ; 26 P.W.R. 1916 ; 34 I.C. 1002.

—— *S. 61—Offence of manufacturing illect liquor—Sentence.*

Held, that section 562 of the Code of Criminal Procedure, 1898, was intended for offenders (and in especial youthful offenders) without being persons of depraved character, may on occasion succumb to sudden temptation ; and was never meant to apply to the effences of manufacturing illicit liquor which stands on quite a different

EXCISE ACT, (I OF 1914), S. 61.

footing as it implies a good deal of preparation and it cannot be said that it is done in consequence of succumbing to sudden temptation, moreover it is an offence which probably escapes detection 9 times out of 10 and it deprives Government of its revenue besides demoralising the people.

Held, also that in such cases deterrant sentences are absolutely necessary as is the object of the new Excise Act, its being realised that the old was not sufficiently deterrent. (Johnstone, C. J.)

Emperor *v.* Sujan Singh.—19 P.R. 1916 Cr. : 41 P.W.R. 1916 Cr. ; 144 P.L.R. 1916 ; 35 I.C. 486.

EXECUTING COURT.

—*Decree binding on—No power to go behind decree.*

The Court executing a decree must take it as it stands. It has no power to go behind the decree, in other words, cannot entertain any objection as to the legality or correctness of the decree, the reason being that a decree, though it may not be according to law, is binding and conclusive between the parties if not appealed from. (Broadway, J.)

Ram Das *v.* S. P. Nitto.—67 I.C. 753.

—*Duty of—Decree to be executing as it stands.*

It is the duty of the executing court to execute the decree as it stands and it is open to the Court to direct something to be done not directed by the decree on the ground that literal compliance with the decree was impossible. An executing court has no right to direct a decree holder build a bund at any point other than that provided by the decree. (Scott Smith, J.)

Ali Mohamed *v.* Jahan Khan.—65 I.C. 26.

—*Duty of—Decree awarding personal remedy in case sale proceeds of mortgaged property do not suffice—Interpretation of decree—Jurisdiction.*

In a suit on a mortgage a Court passed an order for a preliminary decree and decided *inter alia* that in case sale of the property mortgaged should not suffice to liquidate the decretal debt with costs and interest the defendants should be held personally liable for any deficiency. The decree drawn up however, contained the words "shall be at liberty to apply for personal decree. *Held*, that the words in the decree must be interpreted in conformity with the judgment to mean "shall be at liberty to apply for execution of the decree against the defendants personally," and that the Court on the execution side had no power to go into the question whether the defendant was personally liable or not but was bound to execute the decree as it stood. (Johnstone, J.)

Madho Mal *v.* Mohammad Zakaria.—75 P W.R. 1916 ; 32 I.C. 820.

—*Duty of Court—Decree clear and unambiguous—Executing court bound to give effect.*

Held, that it is the duty of an executing court to look in the first instance at the decree and if the terms of the decree are clear

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and unambiguous, an executing court is bound to give effect to it, even though it may regard it as erroneous. (Leslie Jones and Broadway, JJ.)

Kaka Singh *v.* Lachman Das.—3 Lah. L.J. 263.

——*Duty of to execute decree as it stands or to refuse execution, if that is not possible.*

An executing Court cannot tamper with decrees which must be executed literally; when a decree cannot be executed literally it cannot be executed at all.

Plaintiff obtained a decree that he was entitled to share the water flowing through a certain rajabaha equally with the defendant. Subsequently the canal authorities made certain alterations, as a result of which the volume of water flowing through the rajabahr was increased and many other persons besides the plaintiff and the defendant became entitled to a share in the water.

Held, that the decree in favour of the plaintiff was no longer capable of execution. (Chevis, J.)

Khwaja Mahmud *v.* Ghulam Rasul.—59 P.W R. 1918; 44 I.C. 530.

——*Duty to execute decree as it stands—Mortgage suit—Decree in accordance with compromise but not in conformity with O. 34, R 4 Civil Procedure Code.*

The Court of execution has to execute the decree as it stands, and it is not open to the parties to impeach the validity of the correctness of the decree.

A decree passed in terms of a compromise directed the judgment-debtor to pay the debt due to the decree-holder by certain specified instalments providing also that in case of default the property mortgaged to the decree-holder would be sold. Default having been made the decree-holder applied for sale of the property.

Held, that the decree having been passed in accordance with a compromise arrived at between the parties was not a preliminary decree within O. 34, R. 4 Civl Procedure Code but was a final one and capable of execution. (Shadi Lal, J.)

Kora Lal *v.* Punjab National Bank Ltd —55 I.C. 816.

——*Executing Court, if can go behind decree—Decree when incapable of execution.*

An Executing Court cannot entertain any objection as to the legality or correctness of the decree. The fact that the decree is difficult to execute does not render it incapable of execution. (Broadway and Moti Sagar, JJ.)

Jiwan Mal *v.* Nanak Chand.—63 I.C. 975.

——*Jurisdiction—Objection that decree is a nullity or one passed without jurisdiction not maintainable.*

Held, that a court executing a decree is not competent to entertain an objection by a judgment-debtor that the decree was a nullity for having been passed contrary to the provisions of section 10 of the Civil Procedure Code or the Court passing the decree had

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no jurisdiction in the matter. I. L. R. 38 Bom. 194, *followed.* (Scott Smith, J.)

Sheopat Rai *v.* Warak Chand.—42 P.L.R. 1918; 93 P.W.R. 1918; 22 P.R. 1919; 46 I.C. 419.

——*Legality of decree if can be questioned.*

An executing Court cannot question the legality of a decree. 35 P.R. 1900 ; I L.R. 231 All. 181 ; 60 P.W.R. 1908, *followed.* 56 P.R 1918, *distinguished.* (Wilberforce, J.)

Hargopal *v.* Ram Richhal.—60 P.L.R. 1919 ; 54 I.C. 239.

EXECUTION.

——*Arrest of judgment-debtor— When allowable.*

Ordinarily, if for a number of years a decree-holder is active in trying to execute his decree, and if the failure to recover the decretal money is due to the obstruction and bad faith of the judgment-debtor, there would be good ground for ordering arrest.

But where there is no bad faith in the conduct of the judgment-debtor and there is no reason whatever to suppose that he wishes to keep the decree-holder out of his money the Court should grant the judgment-debtor a reasonable time within which to pay the money due under the decree and if during this time the judgment-debtor shows negligence and has not proceeded with necessary vigour, the question whether or not he deserves arrest should be reconsidered. (Johnstone, J.)

Bishen Das *v.* Jiwa Ram.—246 P.L R 1911 ; 153 P.W.R. 1911 ; 11 I.C. 848.

—— *Attachment—Sapurdar of attached property—Responsibility for its production—Dismissal of execution proceedings—Effect—C.P.C., O. 21, Rule 27.*

A sapurdar of attached property has no warrant or justification in making over the property to the judgment-debtor upon an attachment of the property coming to an end by virtue of Order XXI. Rule 57 of the Civil Procedure Code. Inasmuch as the property is made over to his care by the Court, he is responsible to the Court for its production and if he is unable to produce it when called upon to do so he is liable to pay its value. (Broadway, J.)

Darbari Mal *v.* Kanshi.—60 P.R 1919; 74 P.L.R. 1919; 51 I.C. 653.

——*Execution of decree—Death of decree-holder during pendency of execution proceedings—Order directing deceased to pay costs—Legal representative not brought on record—Property of deceased attached in execution of order for costs.*

Held, that an order in execution,—which is the basis of subsequent proceedings,—passed against a person who was then dead is an absolute nullity and cannot be the foundation for any later orders. 7 P.R. 1889 ; 78 P.R. 1891 ; 5 Ind. Cas. 523 ; 1 C.L.J. 584, *referred to.* (Rattigan, J)

Abdur Rahman *v.* Kishna Mal.—247 P.L.R. 1911; 161 P.W.R. 1911 ; 11 I.C. 869.

EXECUTION.

——*Execution of decree—Declaratory decree creating lien—No application made for execution—Lien not extinguished.*

A lien created by a declaratory decree is not extingnished merely because an application for execution was not made in accordance with the provisions of the Limitation Act. (Shah Din and Scott Smith, JJ)

Fatteh Chand *v.* Monghi Bai —181 P.L.R. 1913 ; 108 P.W.R. 1913 ; 109 P.R. 1913 ; 19 I C.481.

——*Execution of decree passed against heirs of debtor—Attachment—Objection by judgment debtor—Possession in lieu of dower Lien.*

The decree-holder in execution of a consent—decree passed against the judgment-debtors as heirs of the debtor attached the house in dispnte. One of the judgment-debtors, a young parda-nashin lady, objected to the attachment It appeared that by an arrangement arrived at between her other judgment-debtors she had been placed in possession of the house in lieu of dower due to her. Among other pleas she contended that as she was minor at the date of the decree she was not bound by it. The execnting Court dismissed the objection but on appeal her objection was allowed. On second appeal.

Held, that the possession of the objector was as that of a mortgagee. 7 All. 77, 353: 32 All. 551, 568; 16 M I A. 377; 9 Bom. L R. 188 ; 34 All. 558, *referred to.*

That assuming that the objector was bound by the decree the house was liable to attachment subject to the objectors lieu over it to the extent of her dower. (Rattigan and Leslie Jones, J.J.)

Jhabban Lal *v.* Safadar Begum.—187 P L.R. 1915; 80 P.R. 19 5; 125 P.W.R. 1915; 31 I.C. 722.

——*Partition—Decree for partition based on award—Encumbrance on property not provided for—Separate suit to determine liability on the mortgage proper.*

Held, that where an award and the decree based thereon for partition of immoveable property make no mention of encumbrance created thereon one of the parties who are father and sons and the mortgagees are no party to the proceeding the executing Court is not competent to decide in execution of the decree, the respective liabilities of the parties as regards the mortgage. Such a question is a fit subject for regular civil suit to be brought by the aggrived party. (Le Rossignol, J.)

Narpat Rai *v.* Devi Das.—139 P.L.R. 1915 ; 59 P.W.R. 1915; 29 I.C. 755.

——*Partition suit—Right of each party to get his share divided by way of execution of decree.*

Held, that, where a suit ordinarily framed for possession of certain property has been treated as a partition suit by the arbitrator to whom it was referred by the parties, and the decree based on the award allots a certain share to plaintiff as well as to each of the defendants, every one of them is entitled to get his own share divided by way of execution of the decree just like plaintiff. (Chevis, J)

Narpat Rai *v.* Devi Das —252 P.L.R. 1912 ; 16 P.W.R. 1912 ; 14 I.C. 375.

EXECUTION.

—— *Payment out of Court—Suit to declare that decree cannot be executed —Cause of action when arises—Limitation—Schedule 1, Arts. 97, 115 and 120.*

Held, that, in case of adjustment of a decree out of Court a suit for declaring that the decree has been satisfied and is not capable of execution is maintainable. Its cause of action arises from the date of repudiation of the payment or adjustment and is governed by Article 97 or 115 of the 2nd Schedule to the Indian Limitation Act IX of 1908. 79 P.R. 1892; 16 P.R. 1910; 18 P.W.R. 1910, *followed*. (Kensington, J.)

Mst. Jamna *v.* Beli Ram.—330 P.L.R. 1913 ; 190 P.W.R. 1913 ; 21 I.C. 557.

—— *Order after notice to parties—Deciding objections—Bar in subsequent proceedings.*

One K D the widow of a mortgagee, obtained in 1903 a decree for rent against M R the mortgagor and in execution attached the house now in suit. N D objected that the house was hers and the objection was allowed and the house released, no suit was brought to contest the order passed on the objection. In 1910 K. D sued for the mortgage-debt and obtained a decree for Rs. 3,152-8-0 with lien on the mortgaged property by attachment and sale of the mortgaged property.

In execution she again applied for attachment of the house and it was again attached. N D again objected and her objection was allowed. K D then brought this regular suit which was dismissed on the ground that the decision in the earlier objection was still to force and binding.

Held, that as the decree in 1910 was not one under the T. P. Act or under O. 34 of the C. P. Code the decree-holder had rightly asked for attachment of the property and thereon the opportunity for objections at once followed.

Held also, that there was a decision *inter partes* as to the liability of certain property to attachment in execution of a decree against M R the mortgagor, and if it was not liable for attachment in execution of one decree on the ground that it did not belong to him it was equally not liable to attachment in execution of another decree (Chevis and Shadi Lal, JJ.)

Mst. Khan Devi *v.* *Mst.* Nihal Devi.—101 P.R. 1915; 191 P.W.R. 1915; 32 I.C. 43.

—— *Order if binding on parties—Burden of proof that decree cannot be executed.*

An order passed in the course of execution proceedings is binding on the parties to the proceedings.

The onus of showing that a decree cannot be executed lies on the person alleging it. (Shah Din and Scott-Smith, JJ.)

Fateh Chand *v.* *Mst.* Menghi Bai.—109 P. R. 1913; 108 P. W. R. 1913 ; 181 P. L. R. 1913; 19 I. C. 481.

—— *Decree—Reversal of—Effect of sale—Purchase by stranger.*

A *bona fide* purchaser who is not the decree-holder, or any person claiming through him, at an auction sale in execution of a

EXECUTION.

valid decree acquires a valid title to the property purchased by him and is not affected by the subsequent reversal or modification of the decree. 14 C. 18; 10 A. 166; 26 C. 734; 37 C. 107, *followed*. (Broadway and Martineau, JJ.)

Tara Chand *v.* Abdul Ahad.—67 I. C. 894.

——*Sale—Irregularities in—Effect on auction purchaser—Stranger purchaser.*

A *bona fide* auction purchaser need look, only to the decree and order of sale of the executing court and is not bound to inquire further into title. So long as the decree remains valid, the proceedings taken under that decree. So far as they affect third parties in the same position as a *bona fide* auction purchaser, cannot be impugned. 29 B. 435, 436; 10 A. 166 (P. C.), *referred to*. (Le Rossignol and Campbell, JJ.)

Indar Saiu *v.* Prabhu Lal.—3 Lah 88; 1922 Lah. 277; 66 I. C. 5.

EXECUTOR.

——*Agreement by executor*—Locus standi *of his heirs to enforce one.*

Held, that the heir of an executor who has taken the probate of the will of the deceased testator and who has died without administering the whole estate have no *locus standi* after his death to enforce an agreement entered into by him with a third person, as such executor with the view to carry out the intention of the testator.

When such an executor dies, the estate of the testator remains unrepresented until some one takes out latters of administration from the Court. (Shah Din and Le Rossignol, JJ.)

Ditta Ram *v.* Rup Chand—152 P.W.R. 1915; 31 I.C. 802.

EX-PARTE DECREE.

——*Application for review of judgment after period prescribed for application to set aside—Limitation*

Where the period prescribed for making an application for setting aside an *ex-parte* decree has expired, the party aggrived by the decree is not entitled to ask for review of the judgment

The Legislature having expressly provided a party aggrived by an *ex parte* decree a method for obtaining justice, it is highly improbable that such person has another remedy also by way of review

A party can only ask for a review of judgment on the ground of "other sufficient cause," if he is able to show that the judgment is incorrect.

Where a notice of appeal was sent to a *sepoy* respondent without the intervention of his Commanding Officer, and the *sepoy* received it without demur, he cannot subsequently urge, in an application to set aside the *ex parte* decree, that he was not duly served, the notice not having been sent through his Commanding Officer. (Johnstone, J.)

Santu *v. Mahant* Arjan Das.—131 P. W. R. 1912; 13 I. C. 318.

——*Setting aside—Revision— Acquiescence.*

This was an application to revise an order setting aside an ex-parte decree. It was contended that the order was not open to revision for (1) it would be open to the petitioner in an appeal from the final decree which might be passed by the lower Court against him, to

EX-PARTE DECREE.

question the correctness or propriety of its order setting aside the ex-parte decree and (2) even if revision did lie, it was incompetent in view of the petitioner's acquiescence in the order under revision by accepting costs and by filing her replication to the pleas.

Held, that the second contention was valid and it was therefore not necessary to give decision on the first contention. 125 P. R. 1892, 24 All. 592 cited in favour of the view that revision did not lie, 22 Cal. 981; 9 Cal. W. N. 584; 25 All. 280, Contra. (Johnstone and Shah Din, JJ.)

Punna Lal *v.* Seth Cowsje.—157 P. L. R. 1914 ; 25 P.R. 1914; 23 I. C. 919.

EXPLOSIVES ACT, (IV OF 1882).

——*S. 5—(Patakhas) or crackers, whether "fire-works"—License whether necessary for sale.*

Held, that patakhas are not fire-works within the meaning of Act IV of 1882 and consequently no license is required either for their manufacture or sale. (Reid, C. J. and Johnstone, J.)

Crown *v.* Bansidhar.—8 P. R. 1910 Cr.; 9 P.W.R. 1910 Cr.; 5 I. C. 911.

EXPLOSIVE SUBSTANCES ACT (VI OF 1908).

——*S. 7—Consent, form of—Whether Court can convict under a section other than that set out in the order of consent, Cr. Pro. Code, S. 230.*

Held, (1) That the proper course for the Loca Government or the Governor-General in Council as the case may be to adopt in cases under Explosive Substances Act is to state briefly the facts which constitute the offence, and to give a consent to the trial of the accused person upon those facts as constituting in the opinion of the consenting authority an offence under one or other of the sections of the Act.

(2) That it is for the Court to decide finally whether upon a given set of facts a particular offence has been committed, and the mere fact the consenting authority is of opinion that the facts constitute an offence under one section of the Act, is in itself no bar to conviction of the accused person upon the same facts of another offence under another section, *vide* S. 230, Cr. P. Code. (Rattigan, C.J. and Dundas, J.)

Amar Singh *v.* Emperor—31 P.R. 1919 Cr.; 1 Lah. L. J. 173; 55 I. C. 102.

EXTRADITION ACT (XV OF 1903).

——*S 7—Power of Political Agents—Incompetency of Chief Court to interfere.*

Held, that the Chief Court has no power to interfere in respect of a warrant issued by a Political Agent of a native State under section 7 of Act XV of 1903, on the grounds either (1) that there is no *prima facie* case against the petitioner or (2) that the circumstances, under which that officer was originally moved, do not justify him to exercise his power under the said section. (Kensington, J.)

Giyan Chand *v.* The Crown.—3 P.R. 1909 Cr.; 36 P.W R. 1908 Cr.; 1 I.C. 198.

FACTORIES ACT, (XII OF 1911).

——*Ss. 41 and 42—Imposition of separate fines on occupier and manager—Exemption by charging the actual offender—Meaning of—"Occupier" explained.*

Section 41 of the Factories Act authorises the Magistrate to impose on the occupier and manager jointly and severally a fine not exceeding Rs. 200. There could consequently be only one fine and for the whole sum each delinquent being liable jointly and severally.

Before the occupier or manager can get exemption under Section 42 of the Act, he must take a certain step to assure the real culprit's conviction and not merely attempt to exculpate himself.

The word "occupier" as used in the Act means the person who has control of the factory. He may be the owner and, and on the other hand, he may be only a lessee or a mortgagee with possession, but it is he who decides whether the factory is to work or to close down. (Le Rossignol, J.)

Niranjan Lal *v.* Emperor.—13 P.R. 1918 Cr.; 21 P.W.R. 1918 Cr.; 45 I.C. 159.

FAMILY SETTLEMENT.

—— *Binding on descendants of parties—Intention of parties.*

One Rupa Singh was the sole owner of a holding of 471 *kanals* of land, nearly whole of which was acquired by him. According to his wishes a family arrangement was arrived at, to which his sons Suba Singh and Dewa Singh, and grandson Kishen Singh son of Deva Singh, consented. Under it 205 *kanals* were allowed to Suba Singh, 109 *kanals* to Sewa Singh and 157 *kanals* to Kishen Singh. After the death of Dewa Singh, sons of Kishen Singh, sued their uncle Bishen Singh for half share in the land that was allowed to Dewa Singh.

Held, that the claim was not valid. In such cases effect must be given to the intention of the parties and there was no doubt that Kishen Singh was finally provided for without further prejudice to the rights of the defendant, the other son of Dewa Singh. The plaintiffs were not justified in re-opening the matter and claiming any portion of the land then awarded to Dewa Singh. (Reid, C.J. and Kensington, J.)

Bishen Singh *v.* Jawala Singh.—202 P.L.R. 1910; 3 P.W.R. 1911; 8 I.C. 776.

—— *Whether binding on sons.*

Held, that family arrangaments or references to arbitration entered into in good faith by the manager of a joint Hindu family or by a father in such a family bind the other members or the minor sons in the absence of fraud or other good reasons to the contrary. (Chevis and Scott Smith, JJ.)

Dwarka Das *v.* Krishen Kishore.—2 Lah. 114; 3 Lah.L.J. 349; 61 I.C. 628.

FATAL ACCIDENTS ACT (XIII OF 1855).

——*Liability for damages for causing death—Proof—Finding of Criminal Court not relevant.*

Held, that, in order to establish Civil liability under Act XIII of 1855, against any person, it must be clearly proved either that he actually committed the wrongful act himself or at the least that he actively aided or abetted the deed and so took part directly in causing it. It is not sufficient to say that he knew that the act was likely to be committed or that it was committed in the prosecution of a common object.

Held, also that the findings of a Criminal Court are not relevant in a Civil Court, but the Criminal proceedings may be referred to to test the evidence offered in the Civil suit.

Per Chevis, J.—The only one of the defendants against whom civil liability could be established is Channan Singh.

Per Kinsington, J.—Even as regards main offender Channan Singh, the fact that both sides were more or less drunk goes far to release him from civil liability. 55 P. R. 1905, *dissented from.*

Haria *v. Mst.* Basant Kaur.—117 P.R. 1912; 128 P.W.R. 1912; 8 P.L R. 1912 Supl.; 16 I.C. 491.

——*S. 1—Test of injury caused—Reasonable expectation of pecuniary advantage—Legacy found on record of pecuniary benefit received in the past*

Under section 1, Act XIII of 1855, legal liability alone is not the test of injury, in respect of which damages may be recovered, but the reasonable expectation of pecuniary advantages by the deceased's relative remaining alive may be taken into account, and damages given in respect of that expectation if it be disappointed, and the probable pecuniary loss thereby occasioned

The question in each case is one of reasonable expectation of pecuniary benefit from the continued life of the deceased and the reasonableness of the expectation is largely founded on a record of pecuniary benefit received in the past. This last, however, is not a codition indispensable to the reasonableness of the expectation, but certainly there must be something more than mere speculation in the future. (Scott Smith and Agnew, JJ.)

The Secretary of State for India *v.* Sardar Gopal Singh.—284 P.L.R. 1913; 188 P.W.R. 1913; 112 P.R. 1913; 20 I.C. 425.

——*S. 1—Persons entitled to claim compensation—Son adopted after death if a child—Widow—Father—Peternal grandmother—Compensation—Joint family property—Widow receiving presents from father-in-law—Share in compensation money.*

Held, (1) That a son adopted after the death of the deceased is not a "child" of the deceased for the purposes of Act XIII of 1855.

(2) Act XIII of 1855 was intended to compensate families for loss occasioned by death, through actionable wrong, of a member

FATAL ACCIDENTS ACT, (XII 1855).

the family. Therefore no part of the compensation was equitably claimable by the deceased's grand-father *i. e.*, father's mother, the father being alive. The relief is granted to specified relations of the deceased and not to the joint family to which he belonged.

(3) That the funeral expenses and the costs of recovering the compensation money should also be rateably borne by the claiments.

(4) That having regard to the fact that the widow was the person most severely affected by her husband's death and other considerations, she was entitled to get $\frac{2}{3}$ of the compensation money.

But she was made to refund the price of the jewelry presented to her by her father-in-law on the death of her husband. (Rattigan and Scott Smith, JJ.)

Siri Gopal *v. Mst.* Amba Devi —52 P R 1914; 122 P.L R. 1914; 26 P. W. R. 1914; 22 I. C. 846.

FOREIGN JURISDICTION.

——*Order in Council 1912—Notifications by Government of India 1913, Nos. 515, 516 I B.—Cr. Pro. Code, S. 177.*

A theft was alleged to have taken place in the goods shed of Bhatinda Railway Station which is in the Native State of Patiala and a Junction Station and part of more than one Railway system and more than one section of Railway lines. The case was tried by a first class Magistrate at Ferozepur and the jurisdiction of the Courts at Ferozepur to try the case and hear the appeal was questioned on appeal.

Held, that according to notification No. 515 I. B. of the Government of India, the courts of Hissar district and those of Ferozepur have concurrent jurisdiction in the station of Bhatinda under its clause 3 and its schedule, and trial by neither, of cases occurring there, can be said to be illegal. The arrangement being inconvenient it was directed that for the purposes of this notification Bhatinda Railway Station be deemed part of the North Western Railway system, and that the Ferozepur court shall exercise jurisdiction there, and not the Hissar Courts.

That the second Notification No. 516 I. B. has no application as regards original jurisdiction in the present case, for it only applies when the case to be tried is one for a District Magistrate with section 30 power or a Court of Sessions.

But as regards appellate jurisdiction in the case there is ambiguity. Notification No. 516 I. B is supplementary to No. 515 I. B., and the schedule makes it clear that appeal lies to the Political Agent for the Pulkian States, and Bahawalpur. (Johnstone, J.)

Ram Lal *v.* Crown.—141 P. L. R. 1914; 7 P. R. 1914 Cr.; 24 I. C. 958.

FOREIGNERS ORDINANCE, (III of 1914).

——*Ss. 3, 4 and 7—Procedure—Trial of an offender—Right of appeal.*

An ordinance is a law and an infringement of its provisions is an offence. Consequently an inquiry into such an offence must, under section 5 of the Criminal Procedure Code, be dealt with

FOREIGNERS ORDINANCE, Ss. 3, 4 and 7.

according to the provisions of that Code, unless there is any other enactment in force prescribing a different method of inquiry into such an offence and in the case of an offence under Ordinance III of 1914, unless there are rules promulgated in exercise of the power conferred by section 7 of the Ordinance.

Where, therefor, the petitioner was charged with having infringed an order under section 3 of Ordinance III of 1914, and the District Magistrate held a regular trial under the Criminal Procedure Code and convicted the petitioner :

Held, that the District Magistrate was bound, as he did, to conduct the trial in accordance with the provisons of the Criminal Procedure Code and that accordingly an appeal lay to the Sessions Judge under section 408 of the Code. (Leslie Jones, J.)

Sher Singh *v.* Emperor.—10 P. R. 1916 Cr.; 152 P. L. R. 1916; 15 P. W. R. 1916 Cr.; 34 I. C. 641.

FOREST ACT (VII OF 1878), Ss. 25 and 32, etc.

——*S. 25, cl. (b)—Permitting cattle to trespass—What amounts to trespass punishable under the Act—Test.*

The question whether the owner of cattle, whose animals trespass in a reserved forest, is criminally liable for committing an offence under S. 25, cl. (*b*), Forest Act, 1878, depends upon the whole circumstances of each particular case. In a great many cases, the question will resolve itself into, 'did he or did he not take proper precautions to prevent such trespass,' and it does not depend upon the presence or absence of the owner at the moment. (Robertson, O.C.J. and Shah Din, J.)

The Crown *v.* Smandar.—16 P.R. 1909 Cr.; 40 P. W. R. 1909 Cr.; 4 I. C. 866.

——*Ss. 25 (b) and 76—Punjab Government Notifications, No. 61, 26th January 1897, R. 28 and No 437 3rd October 1904, R. 1—"Sets fire to" meaning of.*

Held, that, a person is said to set fire to a thing if he puts a match to it or sets it on fire directly, and not if it catches fire as an indirect consequence of his act.

The accused kindled a fire in his master's garden which spread to an unclassed forest, and thence to a reserved forest :

Held, that the accused could not be said to have set fire to either of the forests within the meaning of section 25 (*b*) of the Forest Act but he is guilty under section 76 of the Act. (Johnstone and Scott Smith, JJ.)

Rao *v.* Emperor.—30 P. R. 1916 Cr.; 51 P. W. R. 1916 Cr.; 34 P. L. R. 1917; 36 I. C. 138.

——*Ss. 32, 54 and 55—Conviction for forest offence—Confiscation of forest produce even when not Government property—Produce to be made over to Forest Department—Practice.*

Where a person is convicted of an offence under S. 32 of the Forest Act, the whole of the forest produce, in respect of which the

FOREST ACT, (VII OF 1878). Ss. 32 and 51.

offence was committed, may be confiscated, even though it may not be Government property. When confiscated, the produce should be made over in *specie* to the Forest Department of the Government. (Johnstone, J.)

Emperor *v.* Sadapur.—1 P. R. 1912 Cr.; 37 P. L. R. 1912; 15 P. W. R. 1912 Cr.; 13 I. C. 924.

——*S. 32—Notification No. 58, dated 26th January 1897.*

Held, that the Forest Act 1878, is one curtailing proprietary rights of individuals and the Act and the notifications under it must be construed strictly where rights of individuals are trenched upon. (Clark, C. J.)

Chatar Singh *v.* The Empress.—55 P. L. R. 1901.

——*S. 51—Criminal Procedure Code Act V of 1898, S. 260—Summary trial—Improper discretion.*

Held, that the petitioner's conviction under Section 51 of Act VII of 1878 for being in possession of beams belonging to Government was illegal, where the beams were found concealed in an open filed, which it could not be said was in the exclusive possession of the petitioner.

The Chief Court remarked that, though the Magistrate had the power to try the case summarily, he had exercised an improper discretion in doing so. (Chatterji, J.)

Narain Singh *v.* The Emperor —128 P. L. R. 1902.

FORGERY.

——*Hundi—Penal Code, Ss. 471, 474—Conviction not technically correct but doing substantial justice—Not to be interfered with—Cr. Pro. Code, S. 537—Admission of accused in trial Court how far binding on him.*

S and *A* were charged with using as genuine a forged *hundi*. *S* admitted before the Committing Magistrate that he executed the *hundi*, which purported to be drawn by a firm which never had any existence. In the Sessions Court he modified his statement by saying that he did not write or sign the *hundi*. *A* stated that *S* executed the *hundi* for consideration.

Held, (1) that, as the admission of *S* before the Committing Magistrate was true in the main, he was consequently rightly convicted ;

(2) that, as *A* took the *hundi* from *S* knowing full well that *S* had executed a false document, he was, therefore, guilty under section 474, Indian Penal Code and that as he negotiated it, knowing it to be a forged document, he was also guilty under section 471, Indian Penal Code.

(3) that as the conviction, though not technically correct, did substantial justice, it could not be quashed. (Le Rossignol, J.)

Arura Mal-Sunder Singh *v.* The Crown.—37 P. L. R. 1917; 30 P. W. R. 1916 Cr.; 36 I. C. 154;

FRAUD.

——*Creditors—Documents executed to defraud creditors—Fraud accomplished—Suit not maintainable—In* pari delicto potior est conditio possedentis.

Held, that a plaintiff is entitled to ask a Court of Justice to give him a decree, declaring that a deed of release executed by him was a colorable transaction entered into to defraud his creditors and for enforcing the rights which he possessed prior to the execution of the deed only if the fraud has not been accomplished—when the object of the fraud has been carried into effect no relief can be granted to the plaintiff. (Shadi Lal, J.)

Ram Lal *v.* The Firm of Arur Chand—175 P.L.R. 1915; 115 P. W. R. 1915; 30 I. C. 482.

——*Misrepresentation by plaintiff—That mode of service adopted would give notice of suit to defendant—Ex-parte decree obtained by fraud—Suit lies to set aside decree—Questions raised in previous suit, liable to be re-opened.*

On the date on which a notice of suit was to be issued by the Court, *A*, falsely represented that *B*., the defendant, was away from home in a distant part of the country and that notice should go to him in the form of advertisement in a newspaper of that part, and thus obtained an *ex-parte* decree against the defendant. *B*. sued *A*. on the allegations that *A*. had fraudulently obtained an *ex-parte* decree by concealing the real facts and fraudulently secured execution of the decree in *B's*. absence and without his knowledge :

Held, that the *ex-parte* decree was secured by fraudulent misrepresentation, that the method of service adopted would supply *B*. with notice of suit, and this fraud was sufficiently indicated by the allegations in the plaint.

That *A's* action was clearly fraudulent within the terms of section 17 of the Contract Act and *B*. was entitled to re-open the issues decided in the previous suit. (Reid, C.J. and Kensington, J.)

Mela Ram *v.* Ralla Ram.—75 P. L. R. 1914 ; 40 P. W. R. 1914; 65 P. R. 1914; 22 I. C. 549.

——*Pleadings—Maxim—In pari delicto potior est condition possidentis.*

Where two persons concoct a fraud against a third party they cannot plead the fraud against the third party but are not barred from pleading it against each other. 61 P.R 1895, *followed.* (Clark, C.J.)

Jiwan Singh *v.* Jora.—25 P.R. 1905; 65 P.L.R. 1905.

——*Sale by debtor—To defeat creditor—Purchaser aware of fraud—Transfer void.*

An alienation made pending a temporary injunction is not void.

A sale effected by a debtor with intent to defeat the just claims of a creditor is void if the puchaser is aware of the fraudulent intentions of the debtor. (Chevis and Shadi Lal, JJ.)

Bhagwan Das *v.* Kanshi Ram.—253 P.L.R. 1914; 145 P.W.R. 1914; 25 I. C. 180.

FRAUDULENT SALE.

——*By husband to wife to defraud creditors—Suit for possession on ground of foreclosure—Notice of foreclosure held invalid—Decree for possession in lieu of mortgage-money.*

Where a debtor, with a view to defraud his creditors, executed a sale deed of his property in favour of his wife, purporting to be in lieu of dower alleged as due to her—

Held, upon the circumstances of the case, that it must be held as fictitious, and no effect should be given to it.

In a suit for possession as owner on the ground of foreclosure of the mortgage, if the notice of foreclosure is held as invalid and irregular, decree for possession in lieu of the mortgage money due to the plaintiff as mortgagee may be passed in his favour when the plaintiff is by the terms of his mortgage entitled to possession. (Chatterji, J.)

Devi Das *v.* Karm.—8 P.L.R. 1903.

FRAUDULENT TRANSACTION

——*Fraud not carried out—Suit to cancel transfer—Maintainability.*

The plaintiff, mortgagor sued for cancellation of a deed of mortgage made by him in favour of the defendant alleging that he had been induced to execute the deed by fraud and that there was no consideration. The Lower Appellate Court held that the consideration for the mortgage was unproved and that the transaction was in fact fictition and that what really happened was that plaintiff and defendants had conspired to concoct the mortgage to the detriment of plaintiff's near reversioner K. C.

Held, that as nothing had been done at the time when the suit was brought to carry the fraud into effect, the plaintiff was not debarred from asking for the relief he claimed. I. L. R. 35 Cal. 551 (P. C) *referred to.* (Rattigan, C. J.)

Nabi Bakhsh *v.* Maula —126 P.R. 1919; 53 I.C. 454.

——*Fraudulent Transaction—Award and decree in favour of wife of debtor—Challenge of, by another creditor—Procedure in—Undue preference if can be raised in suit.*

N and G. traded as bankers. Finding themselves in financial difficulties, they called together their creditors, one of whom was F. on 2nd of May 1901, and attepmted to effect a settlem nt w th them. This attempt failed. On the 10th May 1901, an agreement to refer to arbitration was drawn up between N. and G. and *Mussammat* M., wife of N. The arbitrator gave his award the same day, awarding a sum of Rs. 12,000 as due by N. and G. to *Mussammat* M. and declaring that certain factories should be hypothecated to her as security for the debt.

On the 11th of May 1901, an application for filing the award was made by *Mussammat* M. N. and G. appeared in Court and the award was filed and decree passed in accordance with it on the same day. On the 21st May 1910, F. brought a suit against N. and G and having got a decree attempted to proceed against the factories, but was confronted with the decree of *Mussammat* M. The summary proceedings having been decided against him. F lodged a suit to set aside the decree of *Mussammat* M as obtained by fraud and to declare that

FRAUDULENT TRANSACTION.

the factories were liable to attachment and sale in execution of his decree.

Held, (1) that the summary proceedings having been decided in favour of *Mussammat* M., the burden of proof lay on the plaintiff; (2) that the real question was whether, at the time of the decree in suit, N. and G. really owed Rs. 12,000 to *Mussammat* M. and if they did, whether *Mussammat* M. had a perfect right to obtain a decree, and the mere fact that N. and G. owed money to other people did not in any way make the decree fraudulent. (3) that as F. came into Court alleging that the decree was fraudulent, it was for him to prove that the amount was in reality not due to *Mussammat* M; (4) that neither the mere absence of contest between N. and G. on the one side and *Mussammat* M. on the other side, not the hurried way in which the award was drawn up and the decree obtained could be regarded as any proof of collusion or fraud; (5) that there was nothing fraudulent in a debtor consenting to a decree for a time barred debt; (6) that no question of unduly preferring one creditor to another arose, as such question could only be raised in insolvency proceedings. 22 All. 224, *followed*. (Johnstone and Chevis, JJ.)

Mst. Mehngi Bai *v.* Fateh Chand.—246 P.L.R. 1913; 197 P.W.R. 1913; 20 I. C. 355.

FRONTIER CRIMES REGULATION (III OF 1901.)

—— *Operations of to Hindus of Leiah Tahsil of Muzafargarh District.*

Held, (1) That Regulation III of 1901, was in force in the Leiah Tahsil of the Muzafargarh District, and applied to Hindus as well as to Bloches and Pathans. That the notifications Nos. 720-A and 1156, issued under the provisions of the Frontier Crimes Regulation, 1887, must be deemed to be still in force by virtue of S. 24 of the General Clauses Act, 1897.

(2) That although the Leiah Tahsil had never been severed for the purposes of the said Regulation from the Dera Ismail Khan District, to which it belonged at the time of enforcement of the Regulation, the Deputy Commissioner of Muzafargarh District, had jurisdiction to refer the case to *jirga*. 8 P.R. 1903 Cr., *referred to*. (Rattigan, J.)

Bhola Ram *v.* The Crown.—25 P. R. 1915 Cr. ; 53 P.W.R. 1915 Cr; 31 I. C. 646.

—— *S. 15 (i) – In writing — Telegraphic instructions.*

After the trial of a Sessions case had been completed, all except the hearing of the arguments, the Public Prosecutor withdrew from the prosecution of Sadar and Khuda Bakhsh, accused, in order that the case might be referred to a Council of Elders. The Public Prosecutor was authorized by telegram by the Deputy Commissioner "to withdraw the case against Khuda Bakhsh and Haider."

The Sessions Judge refused to stay proceedings on the ground that the Public Prosecutor had not been instructed in writing by the Deputy Commissioner and that the instruction as regards one of the accused named him as Haidar, while his real name was Sadar and acquitted the accused. On appeal against the order of acquittal—

FRONTIER CRIMES REGULATION (III OF 1901), S. 59.

Held, that the wording of the section 15 (*i*) of Regulation III of 1901 was wide enough to include instructions by telegram and the section being imperative the Sessions Judge was bound to stay proceedings against both the accused; the mistake of the name of one of the accused was obviously a clerical mistake and the Sessions Judge should have given the Public Prosecutor time to have it corrected. (Clark, C. J. and Reid, J.)

The Emperor *v.* Janan.—15 P.R. 1903 Cr; 166 P.L.R. 1903.

— *S. 59—Trial without the assistance of Council of Elders—Course of appeal.*

Where a Magistrate, empowered by S. 59 of the Regulation, tries, without the assitance of a Council of Elders, a person charged with having done an act punishable under the Regulation, the ordinary course of appeal prescribed by the Code of Criminal Procedure applies. (Reid, C. J.)

King Emperor *v. Mst.* Alam Katun.—19 P.R. 1910 Cr; 103 P.L.R. 1910 ; 34 P.W.R. 1910 Cr.

FRONTIER REGULATION (II OF 1900).

—*Operation of—*

Regulation II of 1900 is not applicable to a suit pending at the time when it came into force for there is noting in the Regulation which is retrospective in effect.

Before Regulation II of 1900 came into force the District Court of Hazara had jurisdiction over the Tanawal and Phulera tracts of the Hazara District.

The *Nawab* of Amb and the *Khan* of Phulera occupied a somewhat anomalous position before Regulation II of 1900 was passed with respect to Tanawal and Phulera tracts. There was no difficulty in suing them in the Civil Courts in the ordinary way and in getting decree executed against them within those tracts. (Clark, C. J. Robertson and Anderson, JJ.)

Samundar Khan *v.* Ata Muhammad.—104 P.L.R. 1904; 73 P. R. 1904.

FULL BENCH.

——*Reference—Powers of Full Bench.*

Although a particular point is referred to a Full Bench for opinion the Full Bench has power to look into the circumstance under which the reference was made and to deal finally with the appeal out of which the reference has arisen. For an appeal against an order of acquittal to be accepted by the Chief Court, it must be shown not merely that the correctness of the judgment appealed against is open to doubt, but that it is so clearly wrong that its maintenance would amount to a miscarriage of justice. 10 P. R. 1897 Cr., *followed*. (Reid, C. J. and Kensington and Shah Din, JJ.)

Emperor *v* Kiru.—10 P.R. 1911 Cr. ; 205 P.L.R. 1911; 24 P. W. R. 1911Cr. ; 11 I. C. 132.

GAMBLING ACT.

——*Rules under the Act—Gambling.*

Held, that Act XXI of 1857 not being in force in the Punjab, the conviction of the accused under section 12 of the Act was illegal. (Reid, J.)

Ali Hassan *v.* King Emperor.—17 P. R. 1905 Cr; 29 P. L. R. 1905.

——*Gambling—Warrant—Omission to seal is a mere irregularity—Warrant issued by a Magistrate from place outside his territorial jurisdiction is not legal.*

Held, that omission to seal a warrant issued under the Gambling Act is a mere irregularity, but a warrant signed by a Magistrate at a place outside his jurisdiction is illegal and all proceedings held under it are without jurisdiction. I.L.R. XVIII Bom. 636, 1 Bom. 340, *referred to.* (Reid, C. J. and Chavis, J.)

Girdari Lal *v.* The Crown.—23 P. R. 1910 Cr; 85 P.L.R. 1910; 8 I.C. 137.

GAMBLING ACT, (III OF 1867) Ss. 3, 4, 5 and 13.

——*Ss. 3 and 4—Joinl trial—Legality.*

The joint trial of the keeper of a gambling house and other persons who were found in it is not illegal. (Brasher, J.)

Khilinda Ram Sachdev *c.* Emperor.—3 Lah. 359; 68 I.C. 845.

——*Ss. 3 and 4—Misjoinder of charges—Discretion of Chief Court to hear pleader in revision.*

Held, that, a person accused under section 3 of the Gambling Act III of 1867 cannot be tried together with the persons accused under section 4 of the Act on the ground of misjoinder of charges.

Obiter—When the District Magistrate has refused to appoint a legal practitioner to represent the Crown in Revision the Chief Court must decline to hear him. (Johnstone, J.)

Mukhan *v.* Emperor.—5 P.W.R. 1910 Cr; 5 I.C. 720.

—— *S. 5—Search—Provisions of Cr. P. Code if applicable.*

The provisions of Ch. VII of the Cr. P. Code relating to search do not apply to a search conducted under a warrant issued under S. 5 of the Gambling Act. (Brasher, J.)

Khilinda Ram Sachdev *v.* Emperor.—3 Lah. 359; 68 I.C. 845.

——*S. 13—Public place.*

A place outside of a town belonging to private persons not dedicated to the use of the public and not near any *bazar* or road is not a public place within the meaning of section 13 of Act III of 1867. 17 P. R. 1882 (Cr.); 8 W. N. Cal., 592; 31 Cal. 542, *referred to.* (Chatterji, J.)

The Crown *v.* Fajja.—9 P.R. 1905 Cr.; 123 P.L.R. 1905.

——*S. 13—Public place—Blind alley far removed from public road.*

A blind alley removed a considerable distance from a public road and approached only by a circuitous lane is not a public place

GAMBLING ACT, (III OF 1887), S. 13.

within the meaning of the section and a conviction for gambling in a public place could not stand. (Abdul Qadir, J.)

Muhammed Ali *v.* Emperor.—56 I.C. 672; 57 I.C. 931 (Applied) 68 I.C. 848.

——*S. 13—Public place—Place exposed to public view.*

Gambling at a place near a public street and exposed to public view but which was not part of the public street is not an offence under section 13 of the Public Gambling Act. (Shadi Lal, C.J.)

Moula *v.* Emperor.—56 I.C. 672.

GIFT. *See* CUSTOM.

HINDU LAW—GIFT.

MUHAMMADAN LAW—GIFT.

——*Alienation of gifted property—Donor's heir—Locus standi to contest alienation—Donor's descendants alive.*

Where the descendants of a donor brought a suit to contest an alienation of the gifted property made by the widow in favour of her son-in-law and it was found that the donee had lineal descendants in the female line alone.

Held, that as on the death or re-marriage of the widow holding the gifted property as a life-estate, the property would descend to the donee's lineal descendants in the female line, the descendants of the donor had no *locus standi* to contest the alienation of the property by the widow. (Johnstone and Shah Din, JJ.)

Sukhan *v.* Narain Singh.—99 P.L.R. 1914; 138 P.W.R. 1914; 22 I. C. 792.

——*And private owner—Laches Distinction.*

The Government's position differs from that of a private owner and a period of abstinence from suit, which would be excessive in a private owner, is not excessive in the case of Government. (Reid, C. J. and Robertson, J.)

Rahamatu Khan *v.* Secretary of State for India.—113 P.L.R. 1913; 112 P.W.R 1913; 63 P.R. 1913; 18 I. C. 799.

——*Suit by—Power of attorney to institute suit not necessary.*

In a suit on behalf of the Secretary of State for India in Council no power-of-attorney is required from the Financial Commissioner, Punjab, in favour of the Collector authorising him to institute and conduct the suit. (Kensington, J.)

The Secretary of State for India in Council *v.* Mehr Bakhsh.—84 P.R. 1905; 160 P.L.R. 1905.

GOVERNMENT OF INDIA ORDINANCE (II OF 1915).

——*Ss. 2 and 9—Serving under war conditions—Meaning of—Court to Act under S. 9.*

In this case the plaintiff claimed the benefit of Ordinance II of 1915 and the contest turned to a large extent on this point. On the record as it stood the plaintiff had failed to prove that he was 'serving under war conditions.'

GOVERNMENT OF INDIA ORDINANCE (II OF 1915).

Held, that 'serving under war conditions' does not necessarily mean serving abroad. The term is defined in the ordinance.

Held also, that the case was one in which the Court should have acted under Section 9 of the Ordinance.

Held further, that all possible indulgence ought to be extended if it is true that the plaintiff served in France. (Petman, J.)

Gurbachan Singh *v.* Ralla Ram.—2 Lah. L.J. 37 ; 56 I.C. 947.

GUARDIAN AND WARD.

——*Alienation by defacto guardian—No necessity—Suit to set aside—Equity to refund benefit—Specific Relief Act, S. 41.*

Where a minor sued for the cancellation of a mortgage made after his father's death by his paternal uncle as his *de facto* guardian in order to pay off a just debt incurred by the father:

Held, that the paternal uncle had no authority, as the *de facto* guardian, to make the mortgage.

Where the father himself, during his lifetime, did not charge the land in his possession with the payment of that debt, there was no legal liability enforcible against the minor plaintiff or against the estate in his hand to pay his father's debt, and he should not be compelled to restore the amount of his father's debt to the defendant before he is granted any relief.

Under S. 41, Specific Relief Act, the Court has ample power, on adjudging a cancellation of a mortgage debt in favour of the plaintiff, to require the latter to make any compensation to the other which justice may require. But where the defendant, as in this instance, has been in possession of the land for the last 12 years and has been enjoying its produce during that time, and has been sufficiently compensated, nothing further can reasonably be demanded of the plaintiff as compensation to the defendant. (Reid, C. J. and Rattigan, J.)

Choghatta *v.* Asa Mal.—270 P.L.R. 1914 : 30 P.R. 1913 ; 17 I.C. 371.

——*Application for appointment as guardian of persons and properties of minor daughters of deceased Hindu—Application by a reversioner—Dismissal—Appeal—Death of applicant during pendency—Effect—His son if could be brought on record.*

Where a person claiming to be the reversionary heir of a deceased Hindu applied to be appointed guardian of the persons and properties of the deceased's minor daughters, the application was dismissed, and, pending an appeal against the order of dismissal, he died, *held*, that his son could be brought on record as his legal representative and that the appeal did not abate by reason of his death. (Scott Smith, J.)

Arjan Singh *v. Mst.* Gujri.—116 P.L.R. 1917 ; 160 P.W.R. 1917 ; 42 I.C. 410.

——*Appointment of guardian—Minor Hindu co-parcener—Guardian of property whether can be appointed guardian of person—Status of family—Suit by one co-parcner against another for possession, whether effect separation—Partition.*

GUARDIAN AND WARD.

Held, that a guardian of the person of a minor member of a joint Hindu family can be appointed, but not of his property. I.L.R. 25 All. 407, *followed*. 2 P.R. 1892, *distinguished*.

Held, also, that a decree obtained by one of the members of a family for separating his share destroys the joint estate. But a suit to establish that a certain mortgage of a house was effected by joint funds does not amount to a separation. I.L.R. 4 Cal. 434, *followed*. I.L.R. 30 Bom. 152, *referred to*. (Reid, C. J. and Johnstone, J.)

Ram Kishen *v.* Beli Ram.—23 P.R. 1910 ; 33 P.W.R. 1910 ; 5 I.C. 887.

——*Appointment—Necessity for appointment of guardian not shown—Question of marriage of minor—Duty of Court.*

The law does not make it incumbent on the Court to grant every application for guardianship. 93 P.R. 1914 ; 84 P.R. 1915, *followed*.

When the right to solemnize the marriage of a minor girl was in question the Chief Court observed that the Subordinate Judge should have declined to make an elaborate inquiry into the rights of the respective parties to marry the girl and the status *qua ante* should not have been disturbed. (Shadi Lal, J.)

Khazana *v.* Lakshmi Das.—90 P.L.R. 1917 ; 42 I.C. 191.

——*Guardian—Power of District Judge to order prosecution of—Appeal.*

Upon an appeal against an order prssed by the District, Judge, directing prosecution of a person who was appointed guardian of a minor and required to furnish security—

Held, that the order was not appealable.

Held, further, that the District Judge had no jurisdiction to pass the order which must be reversed and set aside as *ultra vires*. (Chevis, J.)

Sital Das *v. Mst.* Jesi Bai.—88 P.L.R. 1910; 8 I.C. 248.

——*Guardian transfering land of minor agreeing to give his own land if minor should object—Guardian compelled by suit to give his land—Pre-emption suit by sons of guardian not maintainable—Sale in execution of decree.*

The guardian of a minor when selling the share of the minor along with his in land held by him and the minor jointly agreed that if the minor should object he would transfer to the vendee his other land equal to the share of the minor. The vendee afterwards obtained a decree to enforce the condition and obtained possession of land belonging to the guardian in execution of the decree. The sons of the guardian claimed the land by right of pre-emption.

Held, that the claim was not valid, for there was no sale within the meaning of the Pre-emption Act, and even if it was, it being a sale completed by the execution of a decree, was not subject to a claim for pre-emption. (Kensington and Rattigan, JJ.)

Nawab *v.* Jawaya.—40 P.R. 1911 ; 203 P.L.R. 1910 ; 105 P.W.R. 1911 ; 8 I.C. 777.

GUARDIAN AND WARD.

—*Hindu Law—Guardian of undivided property of minor member of Hindu joint family—Preference shown by minor to relation to act as guardian of his person.*

Held, that the Civil Court has no power to appoint guardian of a minor's interest in the joint undivided Hindu family.

Held, also, that a minor's agnate specially when the minor is living with him, has better right to be appointed guardian of the person than the minor's father's sister's son.

Held, also, that a Court is bound to give the objector an opportunity of proving under section 13 of Act VIII of 1890 that the applicant is not fit to be appointed. I.L.R. 25 All. 407 (P.C.); I.L.R. 30 B. 152, *followed*. (Shah Din, J.)

Kuri Mall *v.* Bhana Mall.—43 P.R. 1909 ; 39 P.L.R. 1909; 56 P.W.R. 1909 ; 1 I.C. 745.

—*Hindu Law—Sale of minor's share by his brother—Contract Act (IX of 1872) Ss. 11 and 65—Specific Relief Act (I of 1877) S. 38.*

Where a minor sued to avoid a compromise effected on his behalf by his elder brother, by which his right to possession as mortgagee of a piece of building site was given up in lieu of a sum of money—

Held, that in the absence of proof of necessity or any benefit to the minor the transfer was void. The elder brother not being natural or legally constituted guardian of the minor his act was unathorized.

Held, also, that the plaintiff was not bound to make any refund as the transferee had knowingly dealt with the property of the minor and spent money in spite of warning given to him. 7 C.W.N. 441 s.c. 30 Cal. 539 (P.C.) ; L.R. 1, Ch. (1902), 1, *referred to*. (Anderson, J.)

Indar Singh *v.* Narinda Singh.—33 P.R. 1904.

—*Joint Hindu family—Guardian of minor member's property cannot be appointed by Court.*

A Court is not competent to appoint a guardian of a minor member's share in the property of a joint Hindu family.

The minor's remedy is by partition and after partition a guardian can be appointed. (Reid, J.)

Murli Dhar *v.* Hari Lal.—165 P.L.R. 1906.

—*Limitation—Alienation of immoveable property by a minor's predecessor to one who was afterwards appointed the minor's guardian—Suit by the minor to recover that property—Cause of action—Onus on plaintiff of proving suit within limitation.*

Held, that :—(1) Cause of action of a suit by a ward to recover his property, whether moveable or immoveable, misappropriated or alienated by the guardian, arises from the date of the guardian's removal. But where immoveable property has already been alienated and parted with by the ward's predecessor in little, the suit to recover it by the alienor himself or his successor on the ground of invalidity of the alienation is governed by 12 years rule of

GUARDIAN AND WARD.

Limitation and the right to sue accrues from the date of alienation whether Article 142 or 144 of Act XV of 1877 (now Act IX of 1908) applies.

(2) One cause of action cannot come into existence by instalments on different dates. 33 P.R. 1897, *referred to.*

(3) It is generally for the plaintiff to show that his suit is not barred by limitation. So where a person after attaining majority sues to recover his property in the hands of his guardian or other persons for which cause of action has arisen during his minority, he is bound to prove that the suit is within three year's limit allowed by section 7 of the Indian Limitation Act IX of 1908.

(4) The decisions of an issue as to the age of a minor in proceedings relating to the appointment of the guardian for person or property or both of such minor or in curatorship proceedings, are not judgment *in rem* enumerated in section 41 of Act I of 1872 which are declared to be conclusive against the world, although under section 43 of this Act, these are relevent to prove that at a or upto certain time the said minor was under tutelage. 18 All. 478 ; 17 Cal. 849, *referred to.*

(5) In a suit by a ward to recover his property from the guardian appointed by a competent Court the guardian is not estopped from disputing the age of the ward unless it is shown that the former (guardian) by his declaration, act or omission has caused or permitted the latter (ward) to believe anything about the ward's age. (Johnstone and Williams, JJ.)

Hussaina *v.* Sahib Nur.—86 P.W.R. 1910 ; 213 P.L.R. 1910; 7 I.C. 505.

——*Minor not represented at hearing of case by any guardian—Proceedings cannot be treated as ex-parte.*

A minor is not bound by any decree passed against him when he is not represented at hearing of the case by a guardian. The fact that the minor was actually present in Court does not render the proceedings valid, and the proceedings cannot be regarded as ex-parte.

It is the duty of the Court to appoint a guardian of the minor, when no guardian has been appointed for the case, or the guardian appointed refuses to act. 24 Cal. 25 ; 24 All. 383 ; 28 All. 137 ; 22 Mad. 137, *followed.* (Reid, C. J.)

Mst. Ido *v.* Rulia.—35 P.R. 1910 ; 43 P.L.R. 1910 ; 55 P.W.R. 1910 ; 6 I.C. 663.

——*Muhammadan Law—Compromise by brother on behalf of minor brother—Suit by minor through next friend contesting compromise—Equity.*

Where a Muhammadan minor through a next friend impugned a compromise effected on his behalf by his elder brother, who was his *de facto* guardian, without offering to pay benefit received by the minor under the compromise.

Held, that though the brother was not competent under Muhammadan Law to make the compromise, the suit must be

GUARDIAN AND WARD.

dismissed, leaving plaintiff at liberty to sue if he is so advised when he attains majority. (Chatterji and Johnstone, JJ.)

Nur Muhammad *v.* *Mst.* Amina.—91 P.R. 1907 ; 191 P.L.R. 1908.

——*Party to the suit—Failure to set up personal right—Subsequent suit for the property.*

A person who acts as the guardian *ad litem* of a minor defendant in a suit which results in a decree against the minor is not estopped from contesting that decree and urging his own claim to the property in dispute in that suit, in a subsequent suit brought by him in his personal capacity against the plaintiff in the former suit. (Kensington, and Beador, JJ.)

Ganga Ram *v.* Narain Das.—118 P.L.R. 1914 ; 1 P.R. 1914 ; 22 I.C. 955.

——*Re-marriage of a minor's mother—Her right to custody as natural guardian—Her late husband's reversioner to be guardian of the property and not her new husband.*

Even in case of re-marriage of a minor's mother as long as the minor is too young to be taken away from her custody the minor should be left in her charge ; but one of the first reversioners of the deceased father of the minor and not her new husband should be appointed as guardian of the minor's property. (Chevis, J.)

Ahmad *v.* Rahmatan.—32 P.W.R. 1917 ; 40 I.C. 107.

—— *Who can be—Guardian—Mother living in open adultry—Paternal aunt—Guardians and Wards Act, S. 7.*

Held, that appointment of minor's paternal aunt as guardian is proper when it is found that the minor's mother is living in open adultery and has borne children to a man to whom she is not married. (Beadon, J.)

Harnami *v.* Partabi.—67 P.L.R. 1914 ; 30 P.W.R. 1914 ; 23 I.C. 938.

GUARDIANS AND WARDS ACT, (VII OF 1890).

——*Guardian of alleged married girls.*

On an application for the appointment of guardian of two minor girls alleged to be married and living with their husbands, facts denied by the applicant, the Court ordered the petition to be dismissed with leave to the applicant to apply again when she should have, in a regular suit or other proceeding in a competent Court, established either that the minors have not been married to their alleged husbands or that the marriages are invalid. (Chatterji, J.)

Mst. Fakhran *v.* *Mst.* Jaggan.—p. 317 P.L.R. 1900.

——*Jurisdiction—Suit for a declaration as to the plaintiff's right to marry his minor cousins as against the mother's right.*

Held, that a suit by the plaintiffs for a declaration of their right to betroth and marry their minor cousins, and for an injuction to the mother of the minors not to marry or betroth them without the

GUARDIANS AND WARDS ACT, (VIII OF 1890), S. 7.

consent of plaintiffs, is not barred by the provisions of the Guardians and Wards Act. (Reid and Anderson, JJ.)

Mst. Uttam Devi *v.* Maya Ram.—10 P.R. 1904.

——*Ss. 7 and 8—Duty of Court, when application for guardianship is made.*

Held, that when the sole question before the Court is whether the applicant is a suitable person to be appointed guardian of the minor or not, it is not necessary for the Court to do anything more than accept or reject his application.

Held, also that where a minor girl is living with her mother, the Court should leave things as they are, especially when she has no property, and should not appoint a statutory guardian, the mother remaining the natural guardian.

Held, further that it is illegal for the District Court to declare summarily that a minor's marriage by the natural guardian is invalid and that it has no power to demand security from the guardian by way of enforcing the Court's further injunction that the guardian was not to marry the minor without the Court's permission. (Johnstone, C. J.)

Mst. Mohan Devi *v.* Madho.—84 P.R. 1915; 176 P.W.R. 1915; 31 I.C. 237.

——*Ss. 7, 17 and 21—Appointment of guardian—Matters to be considered in making order for—Welfare of minor—Minor husband and minor wife—Husband not to be allowed to obtain custody of his wife by being appointed guardian where cannot obtain such custody by Civil Court.*

In considering whether an order should be made appointing a guardran for a minor, the welfare of the minor is the paramount consideration in the case. Where a Court is satisfied that it is for the welfare of the minor that a guardian should be appointed, an order of appointment should be made. If the Court is not so satisfied, the order cannot be made. To appoint a guardian against the will of the minor, who is old enough to express an intelligent opinion, would not be for the welfare of the minor.

R. C., a minor, was married to a girl *S.* also a minor. The parties were Hindus, but *S.* became a convert to Muhammadanism and refused to live with her husband *R. C.* *R C.* applied under the Guardians and Wards Act to be appointed his wife's guardian. *Held*, that such appointment would not be for the welfare of the girl, as, though it is for the welfare of a married woman that she should live with her husband, and though it is not for the welfare of grown up girl that she should lead a life of celibacy, to compel her to live with her husband against her will and under his guardianship would only conduce to her unhappiness and such a life is about the worse form of boudage known in the world: for these reasons and also as the girl was nearly approaching her majority, no guardian should be appointed. 49 P. R. 1907, *distinguished*. (Rattigan and Chevis, JJ.)

Bhagwana *v.* Ram Chand.—231 P.L.R. 1911; 196 P.W.R. 1911; 11 I.C. 478.

GUARDIANS AND WARDS ACT, (VIII OF 1890), S. 7.

——*Ss. 7 and 15—Guardian, appointment of.*

Held, that it is a mistake to assume that merely because an application is made a guardian must be appointed. The first thing to be done is to consider whether it is really necessary to appoint a guardian at all.

Where the mother of the minor is properly managing the affairs of her minor son no guardian need be appointed. (Robertson, J.)

Mst. Deoki *v.* Bakhtmal.—118 P.L.R. 1913 ; 60 P.W.R. 1913 ; 19 I.C. 783.

——*Ss. 7 and 39—Guardian appointed by will by testator who has no power under his personal law to select guardian of the minor—Muhammadan Law—Minor under 15 years of age.*

Held, that under Muhammadan Law the father of a minor daughter who is under 15 years of age and has not attained puberty is not competent to appoint by will a guardian of the daughter against the right of the grandmother of the child. The appointment by will cannot be given effect under section 7 of the Guardians and Wards Act. (Reid, C. J.)

Bahadur Ali *v. Mst.* Biwi.—48 P.R. 1910; 52 P.L.R. 1910 ; 66 P.W.R. 1910 ; 6 I.C. 734.

——*Ss. 7, 47 and 48—Guardian and ward—Review of order dismissing application for appointment of guardian.*

Held, that the District Court is precluded by Section 48 of the Guardians and Wards Act from reviewing its order dismissing an application for appointment of guardian of a minor passed under section 7 of the Act ; for section 623 of the Civil Procedure Code, does not apply to cases under the Guardians and Wards Act. (Rattigan and Lal Chand, JJ.)

Farid *v.* Metho.—143 P.R. 1906 ; 105 P.L.R. 1907 ; 12 P.W.R. 1907.

——*Ss. 7 and 17—Minor girl—Re-marriage of her mother—Welfare of the minor—Power of Court not to proceed under the Act—Necessity for proceedings to be shown.*

Held, that re-marriage of a mother is not a sufficient reason to deprive her of the custody of her children, for the question in cases of guardianship always is, whether it is for the welfare of the minor to appoint a guardian. It is not for the Court to accept each and every application made for the appointment of a guardian. (Shadi Lal, J.)

Mst. Fatima *v.* Rani.—101 P.L.R. 1915; 36 P.W.R. 1915; 28 I.C. 507.

——*S. 7 (1)—Majority Act, (III of 1875), S. 3—Minority—Guardian and ward—Grant of probate or letters of administration to the guardian of a minor does not extend period of minority.*

The grant of probate or letters of administration to the estate of a deceased person to the *de facto* guardian of a minor not *ipso facto* operate as declaration of guardianship or appointment of

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guardian of the minor within the meaning of section 3 of the Majority Act. (Johnstone and Lal Chand, JJ.)

Ganeshi Lal *v.* Suraj Mal.—89 P.R. 1906 ; 90 P.L.R. 1907 ; 136 P.W.R. 1906.

——*S. 7—Mother and paternal uncle—Preference.*

Held, that until contrary is proved a mother is the proper guardian for the person and property of a minor and preference is not to be given over her to the minor's uncle specially when he is separate and was not on good terms with the minor's father during his life-time. The fact that she shall have to take assistance of her relatives in managing the property is not ordinarily objectionable. (Kensington, J.)

Mst. Pertap Kaur *v.* Jawala Shah.—62 P.L.R. 1913; 12 P.W.R. 1913; 19 I.C. 428.

——*Ss. 7, 29, 47 and 48—Order appointing guardian—Finality of—Sale by certificated guardian with permission of Court—Vendee's title.*

An order appointing a guardian is final (subject to any other order passed in appeal) even if it was made under a misapprehension of the facts of the case.

A sale by a certificated guardian of the property of a ward, with the permission of the Court, transfers good title to the vendees. (Le Rossignol and Martineau, JJ.)

Mst. Rahmun *v. Mst.* Husain Bibi.—73 P.R. 1919; 52 I.C. 841.

——*Ss. 7 and 17—Order appointing guardian in conflict with the decree of Civil Court—Husband—Custody of wife.*

The minor girl concerned in this case was apparently married to two persons K and L. In a suit which took place regarding her marriage a decree was passed in favour of L. with a condition that he should have no right to her person by execution until she became a major. She had not yet attained the age of puberty, when L applied for her guardianship and this was granted.

Held, that this order is obviously in conflict with the decree of the Civil Court that he should have no right to her person till she was of age and must be set aside. (Wilberforce, J.)

Khuda Bakhsh *v* Lal.—2 Lah. L.J. 509.

——*S. 7 (3)—Hindu Law—Guardian and ward—Will—Capacity to appoint guardian of nephew by will.*

Held, that under Hindu Law a man has no power to appoint a guardian of his minor nephew and any provision in a will made by a Hindu testator appointing a guardian of his nephew is not binding on Courts under section 7 (3) of the Guardians and Wards Act. (Chevis, J.)

Dhanpat Ram *v.* Prem Singh.—220 P.L.R. 1911 ; 220 P.W.R. 1911 ; 12 I.C. 452.

——*Ss. 8 to 16—Discretion of Court—Not to be exercised to interfere with family affairs which are satisfactory.*

GUARDIANS AND WARDS ACT, (VIII OF 1890), Ss. 9 to 12.

A Court should refuse to take proceedings under the Guardians and Wards Act when they involve an unnecessary interference with family arrangements which are quite satisfactory. As a general rule for less harm is done by leaving people to manage the affairs of their children in their own way than by attempting to do it for them through the agency of a District Court. (Kensington, C.J.)

Mst. Hayat Khatun *v. Mst.* Sharm Khatun.—93 P.R. 1914; 238 P.L.R. 1915; 26 I.C. 524.

——*S. 9—Ordinarily resides—Temporary residence.*

Held, that the words 'ordinarily resides' in section 9 of the Guardians and Wards Act mean more than a temporary residence even though the period of such temporary residence may be considerable. (Robertson, J.)

Mubarik Shah Khan *v. Mst.* Wajeh-ul-Nissa.—53 P.L.R. 1902.

——*S. 10—Application by uncle to be appointed guardian of his nephew —Opposition by mother—Necessity of counter application—Welfare of minor.*

The uncle of a minor applied to be appointed guardian of his property. The minor's mother opposed the application, and asked that she should be appointed. The Court granted her prayer.

Held, that in appointing a guardian the welfare of the minor should be the determining factor in the decision, and that though the next heir is peculiarly interested in the good management of the property, he ought not to be appointed when he is otherwise unfit. 54 P.R. 1898, *referred to.*

Held, also, that it was not necessary for the counter-application made by the mother to be in the form prescribed in section 10 of the Guardian and Wards Act. (Harris, J.)

Azim Ullah *v. Mst.* Zainab.—105 P.L.R. 1903.

——*Ss. 10 and 11—Failure to comply with its provision.*

Held, that omission to give in the application the several particulars mentioned in Sub-section (1), non-fulfilment of the requirements of Sub-section (2) and (3) of Section 10 of Act VIII of 1890 and non-observance of the procedure laid down in Section 11 of the Act are grave irregularities which vitiate the whole proceedings and the order appointing the guardian of a minor. 135 P. R. 1893, *followed*. (Shah Din, J.)

Suchet Singh *v.* The Collector of Amritsar.—58 P.W.R. 1910; 74 P.L.R. 1910; 6 I.C. 645.

——*S. 12—Order fixing fee of custodian of property of ward—Appeal—Revision.*

No appeal lies against an order fixing the fee of a custodian of the property of the ward appointed under Section 12 of the Guardians and Wards Act 1890. But the order is open to revision. The effect of section 6 of Act XXV of 1899, Punjab Courts Amendment Act is to repeal and re-enact with modifications section 622 of

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the Civil Procedure Code and the reference in section 48 of the Guardians and Wards Act to section 622 of the Civil Procedure Code must be construed as a reference to S. 6 of Act XXV of 1899 in accordance with section 8 of the General Clauses Act 1899. (Clark, C. J.)

Mina Mal *v.* Rai Bahadur Hardian Singh.—48 P. R. 1901.

——S. *13—Application to appoint guardian—Procedure not intended to be summary.*

The procedure under section 13 of the Guardians and Wards Act is not intended to be summary. 17 Bom. 560 at p. 562 ; 71 P. W. R. 1912, *referred to.* (Scott Smith, J.)

Jiwan *v. Mst.* Zebo.—63 P. L. R. 1917; 134 P.W.R. 1917; 41 I. C. 976.

——S. *13—Court's duty to give the objector an opportunity to prove that applicant is not fit to be appointed a guardian.*

Held, that a court is bound to give the objector an opportunity of proving under section 13 of Act VIII of 1890 that the applicant is not fit to be appointed. (Shah Din, J.)

Kuri Mal *v.* Bhana Mal.—43 P.R. 1909; 39 P.L.R. 1909; 56 P.W.R. 1909; 1 I.C. 745.

——S *13—Husband claiming to be guardian of his minor wife—Absence of proper inquiry.*

Held, that a husband may, in many cases, be a suitable guardian of his minor wife, but where the question has not been settled, one way or other, after proper inquiry as contemplated by section 13 of Act VIII of 1890, the order of the District Judge is not maintainable. (Scott Smith, J.)

Tirhu *v.* Lachman.—71 P.W.R. 1912; 109 P.L.R. 1912; 15 I.C. 195.

——S. *17—Effect of change of religion on right of guardianship.*

One *Mussammat* Wazir Begam claimed to be appointed guardian to two minor children and of their property by right of her being their maternal grand-mother as against their father who had embraced the Christian religion.

Held, that the claim should be dismissed. The law of India, while placing all religions on a level before the law and allowing to the fullest extent the right of aggregations to individuals to be governed by their own personal law, protects individuals, so far as may be, from the loss of either rights or property by reason of renunciation of, or exclusion from, any religion. The preservation of such rights must be consistent also with the preservation of the rights of others and when these clash, the Courts have to decide between rival interest according to justice, equity and good conscience.

Held, also that the father has had his children, who were not of age to profess Christianity of their own choice, baptized into the Christian Church, cannot have any legal effect on the rights of guardianship. (Clark, C. J. and Robertson, J.)

Gul Mohammad *v. Mst.* Wazir Begam.—60 P.R 1901; 167 P.L.R. 1901.

GUARDIANS AND WARDS ACT, (VIII OF 1890), Ss. 17 and 19.

——*Ss. 17 and 7—Husband who failed to get restitution of a good guardian.*

Held, that the provisions of the Guardian and Wards Act should not be enforced to enable a husband to get possession of his wife which he has failed to do by execution of the decree obtained by him for restitution of conjugal rights. (Scott Smith, J.)

Mst. Asa Bai *v.* Girdhari Ram.—3 Lah. L.J. 293.

——*S. 17—Maternal Grandmother and uncle versus Paternal Grandfather.*

Where a minor boy aged 6 years had been left almost from birth to the care of his mother's mother and her son and during this period, the minor's grandfather neither contributed to his support nor did anything for him :

Held, that, as against the minor's grandfather, his mother's mother was entitled to the custody of the minor so long as she and her son continued to make satisfactory arrangement about his welfare. (Kensington, J.)

Ambo *v.* Ganga Sahai.—44 P.W.R. 1913 ; 193 P.L.R. 1913 ; 18 I.C. 141.

——*S. 17—Welfare of minor—Competition between minor's maternal grandmother and paternal grandfather's brother—Effect of failure to give security.*

Held, that a minor's maternal grandmother is to be appointed guardian both for his person and property in the presence of his paternal grandfather's brother where in doing so is to secure the welfare of the minor.

The District Court is justified in superseding the guardian who does not furnish security within the fixed time. (Beadon, J).

Buta *v. Mst.* Bhagan.—192 P.L.R. 1913 ; 45 P.W.R. 1913; 19 I.C. 609.

— *S. 19 (a)—Minor child, presumption as to the religion of—Duty of guardian—Marriage of Christian minor with Chamar whether valid Christian Marriage Act XV of 1872—Right to be appointed guardian.*

Held, that a child in India must, under ordinary circumstances; be presumed to have his father's religion and his corresponding civil and social status, and it is, therefore, ordinarily the duty of a guardian to train his infant ward in such religion. 11 W R. 77 (P. C.); 10 B. L. R. 125; 14 M I. A. 309; 2 Suth. P. C. J. 521; 3 Sar P. C. J. 34; 20 E. R. 802, *followed*.

An Indian Christian who was originally a chamar died leaving behind his wife and a minor daughter. Shortly after this the wife was received back into the *chamar* brotherhood and immediately afterwards she married the minor girl to a *chamar* to whom she had been already betrothed by her father. On an application for the appointment of a guardian to the person of the minor.

Held, (1) that the mere fact that the Indian Christian betrothed his daughter to a *chamar* did not warrant the inference

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that he renounced the Christian religion; (2) that inasmuch as the father of the girl was, and died, a Christian, the girl must be presumed to be a Christian and the alleged marriage was, therefore, invalid; (3) that the mother of the girl having renounced the Christian religion was not a fit person to have charge of the girl, who must be brought up as a Christian until she reached years of discretion when she could choose for herself. (Scott Smith, J.)

Canon S. S. Allnutt *v.* Badamo.—46 P.W.R. 1916 ; 32 I.C. 897.

——*Ss. 20, 27 and 33—Duty of guardian in dealing with ward's money—Investment—Duty to account for profit made—Neglect of duty—Breach of trust.*

A guardian stands in a fiduciary relation to his ward and is not allowed to make any profit out of his office and he is bound to deal with the property of his ward as carefully as a man of ordinary prudence. The provisions of the Indian Trustees Act though not strictly applicable can be used as a guide.

Held, consequently that if the wards can prove that moneys belonging to him had been used by the guardian in his business, the latter would be bound to account for the profits he had made out of the use of that money or could have made but for his gross or wilful default.

Held, also that every plain neglect of duty by a guardian amounts to a breach of trust and he must compensate his ward for any loss occasioned thereby. 21 Cal. W.N. 48, *referred to.*

Prima facie it is the duty of a guardian to invest moneys belonging to his ward and S. 33 of the Act provides means by which a guardian may obtain the assistance of the Court in his dealings with his ward's funds. (Broadway and Abdul Raoof, JJ.)

Labhu Ram *v.* Bhag Mal.—157 P.R 1919 ; 2 Lah. L.J. 139 ; 54 I.C. 926.

——*S. 24—Marriage of minor female ward—Responsibility of Court.*

It is no part of a Court's duty under the Guardians and Wards Act to assume direct responsibility for the marriage of a minor of whose person a guardian has been appointed. It would be better if the Court simply declines to either sanction or prohibit the marriage of the minor to a particular person and leave the parties concerned to settle their disputes among themselves. (Kensington, C. J.)

Lal Singh *v.* Sham Lal.—98 P.R. 1914 ; 201 P.L.R. 1915 ; 27 I.C. 381.

——*S. 25—Application for custody—Mother appointed guardian of person and property of minor son living with his grand uncle—Welfare of minor.*

The mother of a minor boy, who was guardian of the person and property appointed by the Court, applied under section 25 of the Guardians and Wards Act for custody of the minor, aged about 14 years, who was living with his grand-uncle. The District Judge refused the application and directed that the minor should remain with his grand-uncle so long as he wished to remain with him.

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Held, that the welfare of the minor was only to be considered in deciding the matter, and the application was rightly refused.

Held, also, that the enquiry made was quite sufficient and the Court was not bound to make a protected enquiry. (Scott Smith, J.)

Mst. Juggo Kaur *v.* Durga Das.—249 P.L.R. 1914; 159 P.W.R. 1914; 27 I.C. 257.

——*Ss. 25, 39 and 47—District Judge's incompetency to superside his predecessor's order appointing guardian—Removal of guardian—Maintenance—Marriage—Appeal.*

On 9th June, 1905, E (District Judge) appointed D to be guardian of both persons and property of three minor daughters of G. nephew of D, and rejected the claim of Z and another.

On 11th October, 1907, E's successor A granted D's application to arrange for the marriage of the eldest girl R.

On 18th December, 1907, A superseded the arrangement.

On 23rd December, 1907, D again applied for assistance of the Court to enable him to regain control of R.

On 24th January, 1908, A, without assigning any good reason, passed an order to the effect that D's guardianship of R should be superseded in favour of Z and D should pay $\frac{1}{3}$ share of profits of Gulam Qadir's land to N, son of Z, for maintenance of R.

Held, that the order of 18th December, 1907, is an arbitrary one and that of 24th January, 1908, is extraordinary and indefensible.

A District Judge *suo moto* has neither power to remove a guardian nor to appoint a person whose claim has already been rejected by his predecessor.

Held, also, that, where a duly constituted guardian is willing to maintain, the Court has no power to pay out of the Ward's property maintenance charges to a person who on his own account chooses to support the minor.

Held, further, that, without assigning very good reasons, the District Judge is not justified in refusing help for restoring the minor to the control of the guardian. (Kensington, J.)

Dula *v.* Allahdi.—150 P.W.R. 1908.

——*S. 29—Applicability of—Transfer by guardian* ad litem—*Sanction of Court unnecessary.*

Section 29 of the Guardians and Wards Act does not apply to transfers of property made on behalf of minors' by their guardians *ad litem* : No sanction of the Court is, therefore, necessary in the case of such transfers. (Shah Din and Wilberforce, JJ.)

Barrat *v.* Jamila.—61 P.W.R. 1918; 44 I.C. 554.

——*Ss. 29 and 30—Certificated guardian who is also natural guardian—Powers of—Alienation without sanction of Court—Validity—Alienation beneficial to minor—Effect.*

Held, that a natural guardian, who has also been appointed guardian under the Guardians and Wards Act, cannot claim to be free from the limitations imposed by section 29 of the Act.

Held, also, that Section 30 of the Guardians and Wards Act gives a minor the right to avoid a sale of his property made by his

GUARDIANS AND WARDS ACT, (VIII OF 1890), Ss. 29 and 30.

guardian without the sanction of the Court; so that even if the whole of the sale price was spent in benefitting the minor, he is still entitled to get back his property. 122 A. W. N. (1905); 2 A. L. J. 460, *followed*. 25 All. 59; 192 A. W. N. (1902), *dissented from*. (Chevis, J.)

Shib Lal *v.* Sham Das.—61 P.R. 1918; 162 P.W.R. 1918; 110 P.L.R. 1918; 47 I.C. 353.

——*Ss. 29 and 31—Sale of ward's property—Power of Court to stop sale if injurious to ward—Specific Relief Act, Sections 38 and 41—Duty to restore benefits received only if other party acted in good faith—Defendants not to restore benefits.*

The Legislature did not intend that a Court should give permission to a guardian to sell the ward's property without fixing at least an approximate price and without clearly ascertaining what is to be sold and the value of it.

Even if a Court has given sanction under section 29 and section 31 (1) it is not beyond the power of that Court to intervene and stop the sale, if it finds something detrimental to the ward's interest is contemplated.

If a plaintiff sues to undo a transaction entered into by his guardian in his name during his minority, then *if the other party has acted in good faith and the plaintiff or his estate has actually received benefit*, the plaintiff must, as a condition precedent to the undoing of the said transaction, restore the said benefit. If, however, the minor or *quondam* minor is the *beatus possidens* and is being sued by the other party, a claim against the minor for refund of the benefit would fail. (Johnstone, C.J. and Rattigan, J.)

Sultan Singh *v.* Hashmat Ullah.—38 P.L.R. 1916; 109 P.R. 1915; 109 P.W.R. 1915; 29 I.C. 804.

——*S. 30—"Any other person," whether include creditor injuriously affected.*

The words "any other person affected thereby" in section 30 of the Guardians and Wards Act (VIII or 1890) do not include a creditor who might be injuriously affected by a transfer of property. (Rattigan and Scott Smith, JJ.)

Lalji Das *v.* Chet Ram.—104 P.L.R. 1914; 75 P.W.R. 1914; 75 P.R. 1914; 22 I.C. 829.

——*S. 30—Mortgage by guardian—No sanction of Court as to interest—Suit on mortgage—Minor's duty to refund benefit—Reasonable compensation—Interest* post diem.

A guardian of certain minors mortgaged some property to plaintiff agreeing to pay interest at 9 per cent. per annum. The plaintiff sued for recovery of the mortgage-money and obtained a decree for Rs. 3,100 principal and Rs. 2,156-3-0 interest and costs against the defendants and the property under mortgage. *Held*, that under S. 30 of the Guardians and Wards Act the alienation was merely voidable at the instance of the minors and although it was correct that the District Judge in sanctioning the raising of a

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loan by the widow did not expressly mention the rate of interest to be allowed, the minors could not be granted their prayer without on their part, restoring all benefits which they had received under their guardian's contract *i.e.* they must restore the principal amount and also reasonable interest and that 9 per cent. per annum was reasonable interest.

Held, also, that although the term in the 1304 mortgage was four years, the Lower Court was entitled to allow interest after due date by way of compensation or damages for at least six years after that date and that 9 per cent per annum was reasonable compensation. 19 All. 39 (P. C.), *referred to.* (Rattigan and Le Rossignol, JJ.)

Muhammad Ismail *v.* Gauri.—24 P.R. 1916 ; 34 I.C. 916.

——*Ss. 34, 47 and 48—Appeal Order directing filing of accounts and payment of money.*

Held, that an order under S. 34 (d) of the Guardians and Wards Act, directing the guardian of a ward to pay a certain sum of money as balance due from him is not appealable but it is open to examination by the High Court on the revision side (Broadway, J.)

Ram Jas *v.* Chani.—4 Lah L.J. 272.

——*Ss. 34, 7 (3) and 28—Appointment of testamentary guardian by Court —His liability to furnish security.*

A guardian under a will, who has also applied for and accepted the position of a guardian under the Act, may be called upon to furnish security under section 34 of the Act. (Chatterji, J.)

Sukh Dial *v.* Karam Chand —99 P.R. 1908; 162 P.W R. 1908.

——*Ss. 34 and 37—Direction to guardian to deposit money due to minor —Appeal.*

Where a guardian is directed to deposit in the Court the money due to the minor there is no appeal against the order but it may be corrected on revision for proper reason. (Abdul Raoof, J.)

Radha Kishen *v.* Khushi Ram.—67 I.C. 309.

——*Ss. 34 (e), 39 (e) and 45—Guardian disobeying order under S. 34 (e)— Imposition of fine* ultra vires*—Proper procedure—Removal of guardian.*

Where a guardian omitted to obey the direction of the Court S. 34 (*e*) of the Guardians and Wards Act, he could be removed from the guardianship under S. 39 (*e*) of the Act. But such omission is not punishable with the imposition of a fine, and S. 45 of the Act does not make such omission punishable. (Shah Din, J.)

Najabat Ali *v.* Mehtab Bibi.—34 P.R. 1912 ; 90 P.W.R. 1912; 137 P.L.R. 1912 ; 14 I.C. 789.

——*Ss. 36, 37 and 41 (3)—Suit for accounts by ward against guardian's representative—Maintainability.*

Held, that a ward is entitled to maintain a suit for account and the amount due to him against his deceased guardian's legal

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representative. 18 Ind. Cas. 876, *followed*. 96 P.R. 1886, *referred to*. 74 P.W.R. 1911; 78 P.L.R. 1911 ; 22 All. 332, *dissented from*. (Shah Din and Leslie Jones, JJ.)

Jamil *v.* Mehran Bibi.—55 P.R 1918 ; 124 P.W.R. 1918 ; 122 PL.R. 1912 ; 46 I.C. 457.

——*Ss. 39 and 47 (3)—Appeal—Order refusing to remove guardian.*

No appeal lies from an order refusing to remove a guardian. (Shah Din, J.)

Ram Kishen *v.* Thakur Das.—195 P.W.R. 1912; 14 I.C. 56.

——*S. 39 (e)—Removal of guardian.*

Held, that, guardian's failure to comply with the terms of his appointment justifies his removal by the Court. (Reid. C.J.)

Gheba *v. Mst.* Bhari.—164 P.L.R. 1913; 98 P.W.R. 1913; 20 I.C. 10.

——*S. 39 (h)—Civil Procedure Code, S. 114—Guardian appointed residing outside jurisdiction—Removal—Review.*

Where a person, who, at the time, was residing outside the jurisdiction of the Court, is appointed the guardian of a minor he cannot be removed from such guardianship subsequently, under section 39 (*h*) of the Guardians and Wards Act, on the ground that he does not live within the juisdiction of the Court.

The provisions of S. 114, Civil Procedure Code, do not apply to orders passed under the Guardians and Wards Act. 143 P. R. 1906; 105 P.L.R 1907, *relied on*. (Reid, C.J.)

Ralla *v.* Manglan.—174 P.L.R. 1912; 116 P.R. 1912; 211 P.W.R. 1912; 15 I.C. 559.

——*S. 39 (3)—Hindu widows—Re-marriage Act (XV of 1856) sections 3 5—Will—Hindu widow appointed guardian of property by will—Re-marriage, effect of.*

Held, that in the absence of any clause in a Will, appointing a widow as guardian of the property of a minor, that her guardianship of property shall cease on her re-marriage, she does not become legally disqualified by re-marriage.

Section 5 of Act XV of 1856 expressly provides that a Hindu lady shall not, by reason of her re-marriage, forfeit any right to which she would otherwise be entitled; testamentary guardianship comes within the scope of her rights. (Kensington, J.)

Mst. Maya Devi *v.* Gopal.—47 P.L.R. 1913; 32 P.W.R. 1913; 18 I.C. 133.

——*S. 41 (3)—Accounts, suit for, against deceased guardian's representatives not maintainable.*

A ward's suit aginst the widow and minor sons of his late guardian for rendition of accounts is not maintainable. 22 All. 332, *followed*. 1 Ind. Cas. 338; s. c. 11 Bom. L.R. 190; 7 Ind. Cas. 214 at p. 215, *distinguished*. 5 C.W.N. 207, *referred to*. (Kensington, J.)

Pritam Singh *v.* Sardar Mubbarik Singh.—78 P.L.R. 1911; 74 P.W.R. 1911; 9 I.C. 591.

GUARDIANS AND WARDS ACT, (VIII OF 1890), Ss. 41 and 43.

——*S. 41 (3)—Guardian and Ward—Removal of guardian—Return of property of minor.*

Held, that, when a guardian appointed by the District Court for a minor's property has come into possession of his property as guardian he can be compelled by that Court to give it upon ceasing to be guardian notwithstandings any claim he may have on the property, which he can establish by a Civil suit. (Robertson, J.)

Parmanand *v.* Arura Ram.—33 P.L.R. 1912; 112 P.W.R. 1912; 14 I.C. 674.

——*S. 41 (4)—Liability of guardian to render accounts—Liability of guardian's heirs and surety.*

Held, that a guardian is not relieved of his liability to render accounts unless there is an express order discharging him and in the present case there was neither an express nor an implied order discharging him, therefore this suit against deceased guardian's son and his surety is maintainable. 25 P. R. 1918, *followed*. (Martineau, J.)

Jagat Singh *v.* Sundar Das —3 Lah.L.J. 364.

——*S. 41 (4)—Order of discharge not express—Civil suit by ward for accounts—Maintainability.*

Held, that in order to bar a Civil suit by a ward on attaining majority against guardian for rendition of accounts, the order of discharge under section 41 (4) of Act VIII of 1890, must be in express terms and not by implication. But a suit based on fraud discovered subsequent to such order is always maintainable. 34 Cal. 211; 7 Ind. Cas. 214, *followed*. 5 C.W.N. 207, *referred to*.

Where a minor on attaining majority made an application for checking the accounts of the guardian on the ground of his bad faith, &c, and the applicant was directed to raise objections he wished to raise by a certain date on which he (applicant) failed to appear and consequently the following order in vernacular was passed:

Held, that this did not amount to an order of discharge under the above section. "Raghpat Rai *hazir*. Amarnath *hazir nahin*. Raghpat Rai *ne naqul bahiyat* Amar Nath *ko de chuka hai our kul Jaidad bhi kawala* Amar Nath *kar di hai Lihaza muquddam dakhil dafter howe.*" (Translation).

"Raghpat Rai present. Amar Nath absent. Raghpat Rai has furnished to Amar Nath a copy of the account books and has made him over whole of the property, the case may therefore be sent to record room. (Broadway, J.)

Amar Nath *v.* Raghpat Rai.—25 P.R. 1918; 108 P.L.R. 1917; 73 P.W.R. 1917; 41 I.C. 344.

——*S. 43 (1) and (4)—C.P. Code, S. 39, R. 2 (2)—Security from guardian—Death of petitioner—Abatement.*

Held, that the District Court was competent to require the guardian of a female infant to furnish security 'to prevent his giving the infant' in marriage to any person without the consent of the proper male relation of the girl.

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On the application of a person the guardian was ordered to furnish security. The order was appealed against but before judgment was passed on appeal the person on whose application security was demanded, who was respondent on appeal, died *Held*, that the order did not abate on account of the death of the respondent. (Reid, C. J.)

Ganda Mal *v.* Ramji Das.—20 P.L.R. 1914; 12 P.W.R. 1914; 23 I.C. 351.

——*Ss. 47 and 41—Appeal—Minor's property in possession of third person—Remedy of guardian—Suit—Practice—Guardians.*

There is no provision in the Guardians and Wards Act authorizing a Court to compel a person in possession of a minor's property to hand over the property to the person appointed guardian of the minor's property.

No appeal lies against an order of the District Judge declining to compel a person in possession of a minor's property to hand it over to the guardian and referring the guardian to a separate suit. (Chevis, J.)

Nathu Ram *v.* Karmon.—40 P.L.R. 1912; 115 P.W.R 1912; 13 I.C. 326.

——*Ss. 47, 48 and 34—Appeal competency—Order directing guardian to pay into Court balance due from him*

No appeal lies against an order calling upon a guardian to pay into Court the balance due from him on settlement of his accounts.

Order under section 34 of the Guardians and Wards Act are open to revision by the High Court. (Broadway, J.)

Ram Jas *v.* Chani.—55 I.C. 587.

—*Ss. 47 and 48—Order appointing guardian—Review.*

Held, that an order made by a court appointing guardian of a minor under the Guardians and Wards Act is not open to review. 143 P.R. 1906. *followed*. (Scott Smith, J.)

Mst. Sharfan *v. Mst.* Bholi.—4 Lah.L.J. 274.

——*Ss. 47 (b) and 48—Order of Court returning application for guardianship for presentation to proper Court under section 9—Appeal—Revision—No interference.*

Where the senior Subordinate Judge at Lahore returned an application for guardianship of certain minors for presentation to the District Court at Amritsar, on the ground that the ordinary residence of the minors being at Amritsar, he had no jurisdiction to entertain the application.

Held, (1) that cl. (b) of section 47 allows an appeal from an order mader under section 9, sub-section (3), returning an application; but that an order under the 1st clause of section 9 of the Act is not appealable.

(2) (*a*) That the High Court's powers of revision under section 48 of the Act are not to be exercised in cases where other remedies are open to a petitioner, and, in the present case, the appellant could present the application for appointment of a guardian to

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the Amritsar Court. (*b*) That the petitioner's inconvenience was no ground for the exercise of this exceptional power. (Abdul Raoof, J.)

Mst., Murad Bibi *v.* Umar Din.—107 P.R. 1919 ; 53 I.C. 563.

——*S. 48—Suit to contest order dismissing application for guardianship, whether maintainable.*

A regular suit practically to contest the finding of the District Court under the Guardians and Wards Act VIII of 1890 to the effect that the plaintiff is not father of the minor and consequently he is incompetent to claim the guardianship of the minor's person is barred by the provision of Section 48 of the Act. (Shadi Lal, J.)

Nagina Singh *v.* Sundar.—24 P.W.R. 1916 ; 33 I.C. 987.

GENERAL CLAUSES ACT (X OF 1897.) S. 21.

——*S. 21—Factories Act, Ss. 28, 29 and 31—Power to approve—Power to cancel.*

Where an Inspector of Factories approves of a custom of working particular factory, he has power, under section 21 of the General Clauses Act to cancel the approval. Where, however, an appeal is pending from the order of cancellation it is not desirable to institute a criminal prosecution in respect of the factory having been worked in contravention of the order of cancellation, during the pendency of the appeal. (Abdul Raoof, J.)

Madan Mohan Lal *v.* Emperor.—59 I.C. 587.

HAQIYAT.

——*Meaning of.*

Held, that the word 'Haqiyat' means rights in immoveable property and though it is as a rule used in connection with landed property there is nothing to prevent its application to house property also. (Chevis, J.)

Bawa Singh *v.* Lachman Singh.—24 P.R. 1911; 186 P.L.R. 1911; 56 P.W.R. 1911; 10 I.C. 850.

HIGH COURT.

——*Powers in revision—Technial error.*

It is discretionary with the High Court to interfere on revision, and it will not exercise its powers, merely because the lower Court has erred on a technical point, if it appears that the lower Court's decision does substantial justice between the parties. 93 P. R. 1911; 11 Ind. Cas. 445; 151 P. W. R. 1911, *followed*. (Chevis, J.)

Abdul Rahman *v.* Bhagwan Das.—120 P.L.R. 1912; 59 P.W.R. 1912; 13 I.C. 720.

——*Ruling of—Duty of subordinate Court to follow.*

A Court is bound in all cases to follow the ruling of the High Court to which it is subordinate quite irrespective of any conflict of authority that there may be between that ruling, and the decisions of other High Courts, and of any views which such subordinate Court may itself entertain as the equities of the

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case with which it is dealing ; that in doing otherwise it would be guilty of grave disrespect to the Court to which it is subordinate. (Clark, C.J. Chatterji and Rattigan, JJ.)

Kassu *v.* Attar Singh.—103 P.R. 1908; 207 P.L.R. 1908; 142 P.W.R. 1908.

HIGH COURTS ACT (24 and 25 VICT. C. 104), S. 15.

——*S. 15—High Court's power of revising order—Legal Practitioners Act, Section 36—Punjab Courts Act, S 13.*

The High Courts have, however, held that in the exercise of the general powers of superintendence and control vested in them under the provisions of section 15 of the High Courts Act they have jurisdiction to interfere with such orders, and in *Man Singh* v. *Emperor*, 3 Ind. Cas. 977; 11 P. R. 1909 Cr.; 115 P.L.R. 1909; 10 Cr. L. J. 443; 28 P W. R. 1909 Cr., a Division Bench of the Chief Court has also decided that it has similar jurisdiction under section 13 of the Punjab Courts Act in cases where an order under section 36 of the Legal Practitioners Act has been passed by a Civil Court. But section 13 of the Punjab Courts Act gives the Chief Court a power of superintendence and control only over Civil Courts and the provisions of that section are not revelent to a case where the Chief Court is asked to revise the order of a District Magistrate. 3 P. R. 1900 Cr.; P. L. R. 1900 p. 17 Cr., *dissented from*. (Kensington, C.J. and Rattigan, J.)

Sadr-ud-Din *v.* Emperor.—266 P.L.R. 1914; 18 P.R. 1914 Cr.; 51 P.W.R. 1914 Cr.; 25 I.C. 513.

HIGH WAY.

——*Dedication—Public street—User of road by public as of right—Presupmtion—Dedication limited to particular class of persons—Burden of proof—Punjab Municipal Act, section 3 (3) (b).*

A limited access by the public to a private place does not operate to convert it into a public street. 6 B. 686; 20 B. 146, *referred to.*

Where, therefore, the gateways of a private *serai* belonging to the plaintiff and two other private persons having fallen down, he proceeded to put them in position and the Municipal Committee served him with a notice to remove the gates, upon which he brought a suit for a perpetual injunction to restrain the Municipal Committee from interferring with the gateways in dispute : *Held*, that inasmuch as the *serai* was a private one occupied by the tenants of the proprietors, who had a right of way over the road leading through a square owned by the plaintiff, the closing of the gateways would give them a cause of action, but the Municipal Committee had no right to interfere with the gateways in dispute. (Johnstone, C.J. and Scott Smith, J.)

The Municipal Committee, Karnal *v.* Mahomed Umar Daraz Ali Khan.—108 P.R. 1916; 136 P.L.R. 1916; 146 P.W.R. 1916; 35 I.C. 458.

——*Public street—Opening of a door into—Suit for injunction—Special damage—Second Appeal—Finding based on no evidence.*

HIGH WAY.

Held, that, according to law a person cannot prevent another from opening a door on what is for all practical purposes an old public street of a village unless he is able to show some special damage to himself, even if its soil was originally his property.

Held, also, that a finding of fact is liable to be set aside in a second appeal where there is no evidence to support it is on the record. (Johnstone, J.)

Mam Chand *v.* Bud Ram.—179 P.L.R. 1914; 80 P.W.R. 1914; 24 I.C. 902.

HINDU LAW.

(1) Applicability.
(2) Adoption.
(3) Begotten child.
(4) Conversion.
(5) Debts.
(6) Gifts.
(7) Guardianship and Minority.
(8) Inheritance.
(9) Joint Family.
(10) Maintenance.
(11) Marriage.
(12) Partition.
(13) Religious Endowment.
(14) Re-union.
(15) Reversioner.
(16) Sanyasi.
(17) Stridhanam.
(18) Widow.
(19) Will.

HINDU LAW—APPLICABILITY.

——Applicability of —Aroras—Bound by Hindu Law *See* Hindu Law —Widow—Aroras.

92 P.R. 1915; 168 P W.R. 1915; 31 I.C. 541.

——Applicability—Bikaneer Maheshries—Adoption—Rules of Hindu Law applicable *See* Hindu Law—Adoption.

27 P.W.R. 1915; 57 P L.R. 1915; 27 I.C. 701.

——*Applicability—Brahmins of Gurdaspur—Near agnates—Daughters and Daughters' sons excluded—Succession—Custom or Hindu Law.*

Under Hindu Law daughters and daughter's sons are preferable heirs and exclude nephews when the deceased at the time of his death was not a member of a joint Hindu family. *Held*, that the plaintiffs, Brahmins of Gurdaspur District, on whom the burden lay had failed to establish a special custom set up by them under which daughters and daughter's sons were excluded by nephews contrary to Hindu law. (Robertson, J.)

Talok Nath *v.* Jagan Nath.—240 P.L.R. 1911; 117 P.W R. 1911; 12 I.C. 51.

——*Applicability—Brahmins of village Chura Punjab—Law governing —Personal law or Custom.*

In the case of *Brahmans* the initial presumption is that they are not governed by custom but by their personal law.

The question whether such persons having given up their personal law and adopted the custom of the tribes among which they dwell, depends chiefly on the fact whether they are dependent *mainly* upon agriculture.

Found, that *Brahmans* of village Chirah, Tahsil and District Rawalpindi, are not proved to be governed by agricultural custom in the matter of alienations. Although many of them no longer

HINDU LAW—APPLICABILITY.

exercise any priestly functions and actually cultivate the land with their own hands, it is not established that agriculture is their sole or main occupation. (Chevis, J.)

Fakir Chand *v.* Ram Chand.—128 P.L.R. 1912; 62 P.W.R. 1912; 13 I.C. 709.

——*Applicability of—Custom of succession.*

Held, that it is the plain duty of the courts to decide question of succession on personal law unless a custom has been established which modifies that law, and that in the absence of proof of a custom, Hindu Law should be followed in this case. (Shadi Lal, C. J. and Le Rossignol, J.)

Dalipa *v.* Dallu.—4 Lah.L.J. 36.

——*Applicability to Khatiks of Punjab—Enticing away a married woman —Divorce—Khatiks—Low class Sudras.*

Held, that, as Khatiks are low class Sudras they do not follow strict Hindu Law, consequently there appears no prohibition among them of divorcing a wife by a written deed. (Johnstone, J.)

Bholar *v.* The Crown.—181 P.L.R. 1914; 31 P.W.R. 1914 Cr.; 24 I.C. 947.

——*Applicability to khatri traders—Hindu Law or Custom test for applying—Presumption.*

The primary test for determining whether agricultural custom or Hindu Law applies is whether agriculture is followed as a chief means of livelihood. 59 P. R. 1908; 175 P.L.R. 1910, *followed*. In the case of Khatris, the initial presumption is that they follow Hindu Law. 137 P. L. R. 1911, *followed*. (Agnew and Shadi Lal, JJ.)

Hakikat Rai *v.* Ram Saran Das.—130 P.L.R. 1914; 16 P.R. 1914: 23 I.C. 154.

——*Applicability—Sikh—Conversion from Muhammadinism—Hindu Law —Custom.*

Siks are governed by Hindu Law as modified by custom. Sikhism admits of conversion and no special ceremony is prescribed. (Reid, C.J. and Rattigan, J.)

Dhalip Kaur *v.* Fatti.—99 P.R. 1913; 41 P.W.R. 1913; 100 P.L.R. 1913; 18 I.C. 930.

HINDU LAW—ADOPTION.

See Also ADOPTION.

(1) Forms of adoption.
(2) Adopted.
(3) Ceremonies necessary to an adoption.
(4) Consent of next reversioner.
(5) Estoppel.
(6) Evidence.
(7) Results of adoption.
(8) Simultaneous adoptions.
(9) Successive adoptions.

——*Adoption—Hindu Law or Custom—Brahmin agriculturists of Kangra District—No need of ceremonies—Mature age of adoptee.*

Held, that among agriculturists all that is necessary for adoption is the unequivocal intention to adopt accompanied by

HINDU LAW—ADOPTION—CUSTOMARY.

treatment and that elaborate Hindu ceremonies are not necessary. In such a case it is also immaterial that the adopter is of mature age and the parties are Brahmins by caste. Treatment from the day of adoption up to the date of institution of the suit, though for a short time is sufficient where the objectors rush into Court at once. (Johnstone, J.)

Prabhu Dial *v.* Kahan.—41 P.W.R. 1912; 78 P.L.R. 1912; 14 I.C. 479.

——*Adoption—Capacity to be taken—Daughter's son—Custom of khatris in Amritsar.*

Held, that the plaintiff has succeeded in establishing a custom recognising the validity of the adoption of a daughter's son among the *Khatris* of the town of Amritsar, and that he must be treated as the validly adopted son. 72 P. R. 1878; 64 P. R. 1883; 162 P. R. 1883; 57 P. R. 1886; 24 P. R. 1900, *relied on.* (Shadi Lal, C.J. and Le Rossignol, J.)

Parmanand *v.* Shiv Charan Das.—2 Lah. 69; 21 P.L.R. 1921; 16 P.W.R. 1921; 3 Lah.L.J. 82; 59 I.C. 256.

——*Adoption—Daughters' son—Custom—Pleadings—New point raised after record of evidence—Estoppel—Attestation of deed—Alienation by widow—Civil Procedure Code (Act XIV of 1882), Sections 44, 578—Misjoinder of cause of action.*

The general rule of Hindu Law that the adoption of a daughter's son is invalid may be varied by family custom. When the factum of such adoption only is disputed the Court may very properly refuse to allow the validity of the adoption to be questioned after the parties have produced their evidence.

In a suit to set aside several alienations made by a Hindu widow it was contended (1) that the suit was bad for misjoinder of causes of action, and (2) that the plaintiff's father having attested the deeds of transfer the plaintiffs were estopped from questioning the validity of the alienations.

One of the deeds purported to affect the devolution of the inheritance after the death of the executant. The second deed recited that the executant was absolute owner of the property alienated, having inherited it from her husband's adoptive father by virtue of her right of succession and also by reason of abandonment and relinquishment of their rights by all the collateral owners of the said adotive father.

Held, that it was doubtful that the suit was not bad for misjoinder of causes of action, and that if there was any such misjoinder, Section 578 of the Civil Procedure Code cured the defect.

That the plaintiff was in no way estopped, for the widow was not competent to alter devolution of her estate after her death and a reversioner by giving his consent could not confer power upon her which she did not possess and that the the plaintiffs claiming as next heirs of the deceased husband of the widow were not affected by the deed in which the widow recited that she had inherited the

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estate from her husband's adoptive father. (Lord Macnagten, Lord Atkinson and Sir Andrew Scoble and Sir Arthur Wilson)

Lala Rup Narain *v.* Gopal Devi.—93 P.R. 1909; 68 P.L.R. 1910; 146 P.W.R. 1909; 3 I.C. 382 (P.C.)

—— *Adoption—Kritma—Succession—Right of adopted son to succeed collaterally—Custom—Appointment of heir.*

Held, that under Hindu Law it is only in the case of an adoption taking place in the Dattaka form that the adopted son has the right of collateral succession. In case of a customary adoption an adopted son ordinarily succeeds only to the estate of his adoptive father, as the relationship between the two is a purely personal one. 113 P. L. R. 1908, *referred to.* (Shah Din, J.)

Jiwan Mal *v.* Jamna Das.—67 P.L.R 1911; 232 P.W.R. 1911; 10 I.C. 822.

—— *Adoption—Jats of Gujranwala—District—Collaterals—Repudiation of adoption—Age.*

When once adoption is validly completed the adopter is not competent to set it aside.

Held, that the adoption of collaterals being valid according to custom of the tribe to which the parties belonged, the plaintiffs, nearer collaterals, on whom the *onus* lay, had failed to establish that the adoption of the defendant was invalid on the ground that the plaintiffs were nearer collaterals.

The general though not the universal principle of the *Jats* and kindred tribes is undoubtedly that a man may appoint an heir from amongst the descendants of a common ancestor, and that he need not necessarily appoint the nearest collateral. 10 P. R. 1908; 78 P. L. R. 1907, *referred to.*

It is also a general principle that the age at which the adoption takes place is immaterial. 40 P. R. 1905; 18 P. L. R. 1905; 49 P. R. 1909; 68 P. L. R. 1909, *referred to.* (Robertson and Beadon, JJ.)

Sant Singh *v.* Mula.—44 P.R. 1913; 23 P.L.R. 1913; 17 I.C. 350.

—— *Adoption—Jains—Power of widow to adopt.*

Held, that among jains a widow has power to adopt and that special ceremonies are not necessary except that the fact should be apparent and due publicity should be given to the adoption. Evidence of adoption discussed and found insufficient. (Kensington and Beadon, JJ.)

Sri Mandarji *v.* Fateh Chand.—295 P.L.R. 1913; 149 P.W.R. 1913; 20 I.C. 553.

—— *Adoption—Sister's son—Valid among non-agricultural Banias of Town—Custom.*

Held, that though the non-agricultural Banias of the Delhi District are governed by Hindu Law, but adoption of a sister's son is valid among them. (Robertson, J.)

Brij Indar Singh *v.* Bansi Lal.—218 P.L.R. 1912; 230 P.W.R. 1912; 88 P.R. 1912; 17 I.C. 36.

HINDU LAW—ADOPTION—CEREMONIES.

——*Adoption—Sister's son—Non-agriculturists*—Khatris.

Held, that among the parties to the suit, non-agriculturist Khatris, whom strict Hindu Law did not apply according to the statements of the parties, adoption of a sister's son was not invalid. 86 P. R. 1904; 79 P. R. 1901; s. c. 107 P. L. R. 1901; 24 P. R. 1900; s. c. P. L. R. 1900 p. 437, *referred to*. (Scott Smith and Ryves, JJ.)

Sohna Mal *v.* Nanak Chand.—16 P L.R. 1911; 4 P W.R. 1911; 9 I.C. 36.

CEREMONIES.

——*Adoption—Ceremonies necessary for—Execution of deed and treatment as adopted son, effect of.*

The Hindu Law insist for the validity of an adoption upon the performance of some formal but not necessarily complicated ceremony of giving and taking.

The execution of a deed of adoption followed by appropriate treatment does not of itself constitute a valid adoption under the Hindu Law. (Shadi Lal and Le Rossignol, JJ.)

Ganga Ram *v.* Amir Chand.—50 I.C. 355.

——*Adoption—Ceremonies—Khatris of Lahore—Adoption of daughter's son whether valid.*

Held, that according to Hindu Law of adoption the essential and operative portion of the ceremony is the giving and the accepting and in the Punjab where the strict Hindu Law ceremonies are rarely observed in their entirety the giving and accepting of a child in adoption is all the ceremony that is essential.

According to the custom generally prevailing among Lahore Khatries the adoption of a daughter's son is valid. 43 P. R. 1869; 35 P. R. 1885, *followed*.

An adoption made by a widow of a Lahore Khatri under authority conveyed to her by the will of her late husband confers upon the adoptee the rights of a real son for all intents and purposes.

A daughter cannot succeed in the presence of such an adopted son, therefore after adoption a gift by the widow of her husband's immoveable property in favour of her daughter is invalid.

Reasonable mesne profits are recoverable by the adopted son from the daughter for the period she illegally remains in possession of her father's property. (Shadi Lal and Le Rossignal, JJ.)

Nikki *v.* Gujar Mal.—152 P.W.R. 1916; 34 I. C. 478.

——*Adoption—Ceremonies—Datta Homam ceremony not essential even according to Hindu Law.*

Held, that, in the Punjab, no elaborate ceremonial of any kind is required for a valid adoption and even from the point of view of strict Hindu Law the *Datta Homam* ceremony is not essential. (Kensington, C.J. and Beadon, J.)

Diwan Chand *v.* Dawarka Nath.—271 P.L.R. 1913; 175 P.W.R. 1913; 20 I.C. 303.

——*Adoption—Consent of next reversioner—Remoter reversioners bound.*

In a case of adoption, the consent given by the next reversioner

HINDU LAW—ADOPTION—EVIDENCE.

of the adoptive father takes it out of the power of the remote reversioners to object. 78 P. R. 1908; 138 P. W. R. 1908; 16 Ind. Cas. 469; 68 P. R. 1912; 194 P. W. R. 1912; 210 P. L. R. 1912, *referred to.* (Johnstone and Chevis, JJ.)

Sohaj Ram *v.* Ram Lal.—78 P.L.R. 1914; 69 P.W.R. 1914; 22 I. C. 542.

——*Adoption—Estoppel—Evidence—Essential.*

A first adopted B and subsequently adopted C. After the death of A. B. and C. divided his property equally as the result of a law suit between them :

Held, that C or his representatives were not thereby estopped from subsequently denying the validity of the adoption of C. and that section 115 of the Evidence Act did not apply to the case. 19 I. A. 203; 20 C. 296; 7 M. 3, *explained and dissented.* 10 C. P. 307; 44 L. J. C. P. 109; 31 L. T. 785; 23 W. R. 747, *referred to.* (Johnstone, and Rattigan, JJ.)

Tek Chand, *v.* Gopal Devi.—46 P. R. 1912; 127 P.L.R. 1912; 180 P.W.R. 1912; 13 I. C. 482.

——*Adoption—Evidence—Bikaner Maheshries—Admissibility of evidence to vary document unambiguous—Adoption by widows of two men—Double adoptian—Foreign judgment—Bikaner, State Court.*

It is a well established principle of Hindu Law that a widow can adopt a son to her late husband when she has been authorized by the latter to make the adoption or, possibly, where her late husbands' kinsmen assent to the adoption and there has been no express or implied prohibition by her husband.

The fact that an invalid adoption was recognized in a judgment as having taken place in fact does not affect the right of the person who would be entitled to property if there were no adoption, when he was no party to suit in which the judgment was passed.

That the laws relating to adoptions prevailing in Bikaner estate would not govern the parties who had left the estate many years previously and settled in Delhi.

That adoption effected by widows of two persons is invalid according to Hindu Law. (Rattigan and Scott Smith, JJ.)

Gopi Kishen *v.* Gopi Kishen.—57 P.L.R. 1915; 27 P.W.R. 1915; 27 I.C. 701.

——*Adoption—Evidence—Deed—Quantum—Registered deed of adoption—No continuous treatment as son.*

A, executed a registered deed of adoption in favour of *B*, admitting therein that he had adopted *B* since his childhood. Within a short time of the execution of the deed *A* declared in Court and also in mutation proceedings that he had appointed *B* as his heir. A few months after, however, *A*, in a written deed of compromise filed in Court stated in express terms that he had never adopted *B*, and that the deed of adoption had been executed by him in *B.'s* favour merely owing to his displeasure with his nearer

HINDU LAW—ADOPTION—EVIDENCE.

There was no evidence of continuous treatment of *B*, by *A*, as his adopted son ever since the date of alleged adoption. The recital in the deed of adoption as to the time of adoption was contradicted by a previous statement of *B*, himself.

C., reversioner of *A*., sued for a declaration that *B*, was not the adopted son of *A*. In the suit A consistently repudiated the alleged adoption :

Held, that under the circumstances the alleged adoption could not be said to have been satisfactorily established. (Shah Din, and Agnew, JJ.)

Ghulam Haidar *v.* Ghulam Nabi.—227 P.W.R. 1913; 342 P.L.R 1913; 21 I. C. 648.

——*Adoption—Evidence—Treatment as son—Adoptor's declaration—Proof.*

The existence of enmity between the adoptor of a son and his collaterals is evidence of a strong motive for the former to injure the latter and in these circumstances, a Court should require specially strong proof that the adoption was a genuine act and not a mere "paper" affair.

Where there was a deed of adoption but no believable evidence that the person adopted was treated as a son and the adoptor had died a few months after the execution of the deed without making any further declaration on the subject.—*Held*, that the factum of adoption was not proved. 40 P. R. 1905; s. c. 18 P. L. R. 1905, *distinguished*. (Johnstone and Chevis, JJ.)

Bura *v.* Narain Singh.—69 P.W R. 1911; 82 P.L R 1911; 9 I. C. 668.

——*Adoption—Evidence—Proof—Treatment.*

Held, that, in cases of adoption it is necessary that there should be a clear expression of an intention on the part of the adoptive father to adopt the boy concerned as his son, and such intention is sufficiently manifested by the execution and registration of a deed of adoption coupled with a clear declaration in Court and subsequent treatment of the adoptee as adopted son.

But where the collaterals of an adoptive father rush into Court with a suit for a declaration in respect of an adoption without allowing him a reasonable opportunity of proving continuous subsequent treatment of the boy as his adopted son for a sufficiently long period, they must not expect the Court to grant them a declaration simply and solely because such subsequent treatment has not taken place. (Shah Din, J.)

Gurbachna *v.* Bujha.—99 P.L.R. 1911; 63 P.W.R. 1911; 42 P.R. 1911; 9 I.C. 821.

——ADOPTION—RESULTS.

——*Adoption—Result of—Succession—Collateral—Right of adopted son to succeed collaterally—Custom—Appointment of heir.*

Held, that under Hindu Law it is only in the case of an adoption taking place in the Dattaka form that the adopted son has the right of collatteral succession. In case of a customary adoption son ordinarily succeeds only to the estate of his adoptive father,

HINDU LAW—ADOPTION—RESULTS.

as the relationship between the two is a purely personal one. 113 P. L. R. 1908, *referred to.* (Shah Din, J.)

Jiwan Mal *v.* Jamna Das.—67 P.L.R. 1911; 232 P.W.R. 1911; 10 I.C. 822.

——*Adoption—Succession—Right of collaterals of adoptive father to succeed to the property of adopted son.*

It cannot be urged for the first time on appeal that the case should be decided according to general custom when the case has been decided according to the personal law of the parties on their pleadings in which they have admitted that they do not know of any custom contrary to their personal law. Under Hindu Law a daughter's son cannot be adopted in the *dattaka* form by twice-born classes.

The family of the adopted son is not altered and no relationship with the adoptive father's collateral relations is established when adoption is not according to *dattaka* form, but according to established custom prevailing among non-agriculturists or *kritrima* form. (Chatterji, J.)

Baij Nath *v.* Shamboo Nath.—113 P.L.R. 1908.

——*Adoption—Results—Agreement—Right of adopted son—Ante adoption agreement limiting rights of adopted son, how far valid.*

An agreement between the adopted father or mother and the natural father or mother of the adopted boy by which the latter's rights are to take effect after the adoptive mother's death is perfectly valid.

Where therefore, a deed of adoption reserved to the wife of the adoptive father a right to his property during her life-time. *Held*, that the condition was binding on the adopted son. (Scott Smith, J.)

Shanti Parshad *v. Mst.* Dhan Devi.—42 P.W.R. 1919; 50 I.C. 113.

——*Adoption—Rights of adopted son—Mitakshara Law.*

Where the adoption is not in the Dattaka form, he cannot, under Mitakshara, succeed collaterally in the adoptive father's family. (Broadway and Abdul Raoof, JJ.)

Tirath Ram *v.* Khan Devi.—1 Lah. 588; 3 Lah.L.J. 35; 60 I.C. 101.

——*Adoption—Rights of—Natural son.*

An adopted son takes one-fourth of the entire estate in the presence of a natural son. By adoption the adoptee becomes a co-parcener with the adopter who could not thereafter dispose of any property belonging to the joint family. (Shadi Lal, C.J. and Le Rossignol, J.)

Parmanand *v.* Sheo Charan Das.—2 Lah. 69; 21 P.L.R. 1921; 15 P.W.R. 1921; 3 Lah.L.J. 82; 59 I.C. 256.

——*Adoption—Results—Pre-adoption—Alienations—Rights of—Suit—Contesting authority of—Daughter-in-law if competent to question.*

Held, that the customary appointment of an heir is to all intents and purposes tantamount to a bequest and, therefore, a

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person who cannot contest the power of testamentary disposition of a proprietor cannot be allowed to challenge the power of nominating an her. A daughter-in-law, therefore, under the Customary Law, cannot attack the adoption made by her father-in-law. 63 P. R. 1912; 222 P. W. R. 1912; 14 Ind. Cas. 23; 94 P. R. 1913; 177 P. W. R. 1913; 20 Ind. Cas. 454; 162 P. W. R. 1913; 20 Ind. Cas. 839, *followed*. 68 P. R. 1903, *distinguished*. (Chevis and Shadi Lal, JJ.)

Mst. Basanti *v.* Natha.—12 P.R. 1916; 58 P.W.R. 1916; 36 P.L.R. 1917; 33 I.C. 147.

——*Adoption—Succession—Rights of members of natural family of the adopted person in the property of the adoptive father—Practice—Evidence—Documents not printed.*

Where a person has been removed from his natural family by adoption, his heirs should be sought for among those related to him in his new family and relationship in his natural family is of no account in the matter of succession.

The property in suit belonged to one L. D. who adopted M. L. as his son. It was inherited by M. L's grandson's widow in due course of succession. On her death dispute arose between her daughter and a collateral of M. L. to succeed the property left by the widow.

Held, that M. L. being affiliated to L. D.'s family by adoption his collateral in the original family had no right to inherit the property in dispute.

Where it was urged by the appellant that the Lower Court had wrongly refused to admit in evidence documents on the file of a previously decided suit and the appellant when asked to state what documents he required to be printed did not take any notice of the matter, the Chief Court under the rules of practice and on the objection of counsel for respondent refused to refer at the hearing of the appeal to the file of the suit previously instituted. (Anderson and Harris, JJ.)

Bhikhu Mal *v. Mst.* Chando.—79 P.L.R. 1902.

——ADOPTIONS—SIMULTANEOUS.

——*Simultaneous adoptions—Invalid—Effect of.*

Under Hindu Law, the adoption of a second son during the life-time of a previously adopted son is invalid. If a person adopts two persons simultaneously both the adoptions are invalid. A person whose adoption is legally invalid remains in the family of his natural father. (Johnstone and Rattigan, JJ.)

Tek Chand *v.* Gopal Devi.—127 P.L.R. 1912. 180 P.W.R. 1912; 46 P.R. 1912; 13 I.C. 482.

——ADOPTIONS—SUCCESSIVE.

——*Successive adoptions invalid when prior adopted son is alive.*

Under the Hindu Law, the adoption of a second son during the life-time of the first adopted son is invalid. (Scott Smith, J.)

Shanti Prasad *v. Mst.* Dhan Devi.—42 P.W.R. 1919; 50 I.C. 113.

HINDU LAW—ALIENATION.

See CUSTOM—ALIENATION.
HINDU LAW—JOINT FAMILY—ALIENATION.

——BEGOTTEN CHILD.

——*Rights of—According to Hindu Law and according to English law for many purposes—What are.*

A plaintiff having a right of pre-emption does not forfeit his right by suing jointly with one who has no such right. 88 P. R. 1893, *referred to.*

A person not born at the date of a sale cannot claim a right of pre-emption in respect of that sale.

If, however, a Hindu plaintiff proves that at the date of sale he was *en ventre sa mere* it is possible that his claim for pre-emption might have some force for according to Hindu Law a child begotten has if subsequently born all the rights of a child in existence. 16 M. 76; 2 M. L. J 244; 55 P. R. 1903; 117 P. L. R. 1903; 14 Ind. Cas. 60; 173 P. W. R. 1912, *referred to.* (Rattigan and Beadon, JJ.)

Mst. Mangli *v.* Subha Singh.—218 P.W.R. 1913; 1 P.L.R. 1914; 20 I.C. 272.

ANCESTRAL PROPERTY.

——*Ancestral property—Meaning of—Property inherited by two brothers from maternal grand-father—Nature of estate.*

'Ancestral' property in Hindu Law is to be limited to property which has come from certain male lineal ancestors as enumerated in the text-books.

Where two brothers inherit a certain property from their maternal grand-father, they hold it as joint tenants with right of survivorship and not as tenants-in-common. (Kensington and Shah Din, JJ.)

Karam Chand *v.* Jai Ram.—92 P.R. 1914; 224 P.L.R. 1914; 124 P.W.R. 1914; 24 I.C. 928.

——CONVERSION.

——Conversion—Effect on the right of members of joint family to sue to declare mortgage by father invalid. *See* Hindu Law—Joint family, father.

89 P.R. 1915; 31 I.C. 476.

——*Conversion—Effect of.*

Conversion does not dissolve a marriage under the Hindu Law. (Abdul Raoof, J.)

Mst. Nandi *v.* Emperor.—1 Lah. 440; 59 I.C. 33.

——*Conversion—Marriage—No dissolution possible by wife's conversion to Islam—Custody of wife, professing conviction to Islam—Equity and good conscience.*

Held, that apostacy of one of the parties to a marriage in the case of Hindus, does not *per se* annul the marriage, and a Hindu husband's suit for restitution of conjugal rights cannot be defeated by the fact of the wife's conversion to Islam after her marriage with the plaintiff. (Johnstone and Rattigan, JJ.)

Jamna Devi *v.* Mul Raj.—49 P.R. 1907; 83 P.L.R. 1908.

HINDU LAW—CONVERSION.

——Conversion—Muhammadanism—Effect of—Conversion of Hindu to Muhamadanism separates him from the joint family. (Shadi Lal and Leslie Jones, JJ.)

Ganga Singh *v.* *Mst.* Begam.—57 P.R. 1916; 159 P.W.R. 1916; 4 P.L.R. 1917; 35 I.C. 549.

——*Conversion—Muhammadanism—Sikhs—Sikhism admits of Muhammadans being converted to Sikhism.*

Held, that :—

1. Sikhism has at all times been a proselytising religion and has sought converts not only from Hinduism but also from "outlandish" religions such as Islamism and Christianity, and such converts are recognized as Sikhs by the *Sikh* community.

2. There is no a *priori* legal or customary bar to the conversion of a Mohamadan man or woman to the Sikh faith and that such a convert after initiation becomes a Sikh, and even a Singh, provided in the latter event, that the initiation has been effected by the *pahul* system of baptism instituted by Guru Gobind Singh. (Reid, C.J. and Rattigan, J.)

Dhalip Kaur *v.* Fatti.—99 P.R. 1913; 41 P.W.R. 1913; 100 P.L.R. 1913; 18 I.C. 930.

——*Conversion*—Sikh Jat–*Abduction of sweeperess—Conversion—Marriage—Issue—Legitimacy of—Presumption.*

A, a *Sikh Jat*, abducted a sweeperess B. whose husband was living. B's husband prosecuted A, for abduction. Some time after that, A and B turned Muhammadans and went through the usual form of marriage prescribed by Muhammadan Law. They lived as man and wife for a long series of years and subsequent to his complaint for abduction. B's first husband never took any steps to assert his marital rights. As the result of the marriage of A and B a son C was born to them. C lived with A and was treated by him as well as his brotherhood as his legitimate son.

Held, that there was a strong presumption that B's first husband had repudiated or divorced her before A married her and consequently C was the legitimate son of A. (Robertson and Shah Din, JJ.)

Sheru *v.* Jawahir Singh.—58 P.R. 1912; 240 P.W.R. 1912; 13 I.C. 662

——DEBTS.

(1) Antecedent Debts. (2) Family Debts.

(3) Son's Liability.

——*Debts—Antecedent debt.*

An antecedent debt is one which was incurred not only prior to the security sought to be enforced but must be quite independent of it. (Abdul Raoof and Harrison, JJ.)

Leikh Shah *v.* Dina Nath.—63 I.C. 515.

——*Debts—Antecedent debts—Mortgage by father—Son's liability.*

The son's share of the family property is not liable to satisfy

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a mortgage created by the father unless it is shown that the mortgage was created to discharge an obligation antecedently incurred by the father and the obligation was incurred wholly apart from the ownership of the joint estate. 39 A. 437 : 51 A. 235; 6 P. L. J. 72, *followed*. (Scott-Smith and Abdul Qadir, JJ.)

Lakhu Mall *v.* Bishen Das.—3 Lah. 74; 66 I. C. 408; (1922) Lah. 291.

——*Family debts—Liability of family—Benefit of family—Liability of members of a joint Hindu family—Presumption—Debts by manager.*

The plaintiffs sued *S.* his father *B.* and his brother *J.* for recovery of a debt incurred by *S.* alone and decree was passed against them, on the finding that when the debt was incurred all the three defendants were members of a joint Hindu family. It was not shown that the loan was taken either for the benefit of the family or for the purposes of a joint family business.

Held, that under the circumstances *B.* and *J.* were not liable to pay the debt. There is no presumption that a debt contracted even by the manager of a Hindu family was contracted for the benefit of the family or firm. (Leslie Jones, J.)

Bhura *v.* Banarsi Das.—174 P.L.R. 1915; 113 P.W.R. 1915; 30 I.C. 481.

——*Debts—Manager—Liability of junior members.*

There is no presumption that a debt contracted by the Manager of a Hindu family was contracted for the benefit of the family. In each case it must be proved that the debt for which all the members of the family are sought to be made liable was incurred for the benefit of the family. 174 P. L. R. 1916, *referred to*. (Abdul Raoof and Harrison, JJ.)

Mela Mal *v.* Gori.—3 Lah. 288; (1922) Lah. 200; 66 I. C. 485.

——*Debts—Manager—Liability of minor and adult co-parceners.*

Where the manager contracts debts for the ordinary purposes of the family business, the co-parceners whether adult or minors are liable but only to the extent of their share in the property. (Broadway and Abdul Raoof, JJ.)

Bishen Singh *v.* Kidar Nath.—2 Lah. 159; 62 I.C. 800.

——*Debts—Liability of family—Trade—Debts contracted by, if binding on family.*

There is no presumption that a debt contracted by the managing member of a joint family business was contracted for the benefit of the family or for the family business. I. L. R. 34 All. 135, *followed*. (Rattigan, C. J.)

Ram Dhan Das *v.* Ramji Das.—59 P.L.R. 1919; 50 I.C. 215.

——*Debts—Trade—Debt by manager—Liability of minors.*

A joint family which carries on a trade handed down from ancestors becomes a trading family, and in such case, the minor members are liable for the debts coutracted by the managing member

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for the purposes of the trade or purposes incidental to it. (Scott Smith and Leslie Jones, JJ.)

Dayal Singh *v.* Babal Singh.—60 I.C. 610.

——*Debts—Joint family—Widow's right of residence—Exclusion of decree—Attachment.*

Held, that, a decree obtained against a debtor or his legal representative for an ordinary debt incurred in family affairs takes precedence of the debtor's widow's right of residence in the family house left by the debtor (her husband) (Johnstone, J.)

Mst. Bhagwanti *v.* Messrs. Macdonald.—150 P.L.R. 1909; 152 P.W.R. 1909; 4 I.C. 1013.

——*Family debts—Debts incurred by one of the members—Liability of other members—Presumption.*

Held, that it is not a correct statement of Hindu Law to say that when a debt was contracted by one member of an admittedly joint Hindu family, it is necessary for the plaintiff to show that the debt was raised for joint family purposes, on the contrary the presumption would be the other way.

Held, also that where the Courts below have taken so wrong a view as to how cases of that kind ought to be dealt with, interference on Revision is justifiable. 45 P. R. 1899; 59 P. R. 1893; 34 Bom., 72, *referred to.* 241 P.W.R. 1912; 48 P. R. 1913, *distinguished.* 34 All. 35, *dissented from.* (Johnstone, C. J.)

Brij Lal *v.* Jaishi Ram.—172 P.L.R. 1915; 106 P. W. R. 1915; 30 I. C. 500.

DEBTS—LIABILITY OF SON.

——*Son's liability—Father's debts—Onus, necessity—Proof.*

Held, that, where a son contests an alienation made by his father in consideration of old debts, and it appears that the debts are not imaginary and that the father was not immoral or extravagant, the burden of proving want of consideration lies on the son.

Held, also, that it is for the alienee to prove clearly the necessity for alienation. Necessity cannot be inferred merely from the facts that the alienor's holding was a small one and that he got into debt by degrees.

Held, further, that a mortgagee cannot, in a suit against the alienor's reversioners, obtain possession of even a fraction of the land, unless he can prove that the transaction was wholly for a necessity. 24 P.R. 1903, *followed.*

But where the consideration of a mortgage partially consists of an old mortgage which is for necessity, the mortgagee may fall back on the former mortgage. (Chevis, J.)

Miran Bakhsh *v.* Godde Ram.—89 P.W.R. 1912; 13 I.C. 556.

——*Son's liability—Binding debt—Money borrowed by father for family purposes—Son, whether liable for repayment—Death of son pending appeal—Liability of family property.*

Where, in a suit to recover money due on a deed, it appeared that the father of the defendant borrowed the money for family purposes, the father and the son forming a joint Hindu family :

HINDU LAW—DEBTS—SON'S LIABILITY.

Held, (1) that the father in borrowing the money acted as the agent of the family and, therefore, the son was as much liable for the payment of the debt as the father ; (2) that under the circumstances the question of the son's personal liablity did not arise, as he had died during the pendency of the appeal leaving has widow as his sole heir, and that the family property was liable for the amount. (Shadi Lal, J.)

Anant Ram *v.* Mansa Ram.—39 P. W. R. 1916; 32 I. C. 780.

——*Debts—Son's liability—Decree debt.*

A simple money decree for Rs. 1,000 was passed against a Hindu on the basis of two bonds dated 4th August 1914. In execution thereof the decree-holder attached certain houses which were admittedly joint family properties. Thereupon the judgment-debtor's son applied to the execution Court to raise the attachment but the Court refused to do so. He then instituted a suit for a declaration that the houses are not liable to attachment and sale. It was contended on her behalf that the debt in question was illegal, inasmuch as the six bonds in lieu of which the bonds sued upon had been obtained were executed during the minority of his father.

Held, that the debts were justly due by the father to the decree-holder and that no such illegality has been shown in the nature of these debts as would absolve plaintiffs from his obligation to pay them out of the joint family property. 16 M. 99, *followed.* 11 C. W. N. 135; 31 P. R. 1911, *referred to.*

Held, also, that the *onus* of proving that debt was non-existent or illegal and that he was in consequence relieved from his pious obligations to discharge it was clearly upon the son, and he having failed to discharge it, the joint family property is liable. (Abdul Raoof and Moti Sagar, JJ.)

Ram Rattan *v.* Basant Rai.—2 Lah. 263; 3 Lah.LJ. 563. 64 I.C. 121.

——*Debts—Son's liability—Decree against father.*

To render a son liable for the fathers debts, the mere existence of a decree against the father is not an evidence against the son who was not a party to the suit in which the decree was obtained. (Chevis, J.)

Kasturi Mal *v.* Lajja Ram.—60 I.C. 751.

—— *Debts—Son's liability—Father—Money decree—Sons, if bound.*

A money decree against a Hindu father, neither for illegal nor immoral purposes, whether for family purposes or not, may be enforced in his life time against the entire joint family property and is binding on the sons. (Abdul Roof and Moti Sagar, JJ.)

Ram Rattan *v.* Basant Rai.—2 Lah. 263.

—— *Debt—Son's liability—Immoral Purposes—Consideration—Proof—Onus—Necessity.*

Held, that :—(1) In the absence of any proof to the contrary the presumption is that property purchased in the name of a minor son belongs to his father. (2) The property purchased with the aid or on the security of ancestral property is itself ancestral property.

HINDU LAW—DEBTS—IMMORAL DEBTS—SON'S LIABILITY.

(3) If all necessary and legal debts of a person are defrayed from one known source, the presumption that all other loans were expended on immorality arises only when the debtor had no debts of business on which the loans *might* have been expended with propriety. 50 P. R. 1913; 17 Ind. Cas. 735, *referred to.* (4) In a suit brought against the heirs of an original debtor for the recovery of moneys advanced on the security of mortgage-deeds, the *onus* lies on the plaintiff to establish that full consideration passed. (Chevis and LeRossignol, JJ.)

Inder Narain *v.* Nanak Chand.--58 P. R. 1916 and 1917 ; 74 P.W.R. 1916 ; 32 I.C. 454.

——*Debts—Son's liability—Illegal and immoral debts—Immorality—Proof of.*

Held, that, if a debt is contracted for an immoral purpose by a Hindu father, it is not binding against the son, even if the property is acquired by the father himself.

Held, also that, although in order to prove that a debt was incurred for an immoral purpose, it is not sufficient to prove isolated acts of immorality or even general immorality but there must be clear connection between the immoral life and the debts contracted, yet it is not necessary to show that the proceeds of each loan was separately spent on a specific act of immorality. It would be sufficient to prove that the borrower was at the time living a licentious life, beyond his means, indulging in drink, riot, prostitution and debauchery, and that at the same time, he was without any business or occupation on which the money might legitimately have been spent, without showing on which particular act of immorality the money was spent. If it is proved that at the time of the loan, the borrower was notoriously wasting his substance in riotous living and spending large sums beyond his income and above his station in life, in this way only, the loan contracted in the midst of such living and spent upon it would be a loan contracted for immoral purposes. 53 P. R. 1901; I. L. R. 20 Cal. 328; I. L. R. 13 Cal. 21 (P. C.): 13 I. A. 1; 6 I. A. 88; I. L. R. 5 Cal p. 148; 4 C. L. R. 226; 31 I. L. R. All. (F. B.) 176; 6 A. L. J. 263; 1 Ind. Cas. 470, *referred to and explained.* (Robertson and Beadon, JJ.)

Ram Nath *v.* Bulaqi Ram.—50 P.R. 1913; 15 P.W.R. 1913; 69 P.L.R. 1913; 17 I.C. 735.

——*Debts—Liability of son—Illegal or immoral debts—Creditor party to father's waste.*

A Hindu son is bound to discharge the debts contracted by his father, unless it is shown that they were contracted for illegal or immoral purposes ; and where it is alleged by the son that a particular debt was contracted for such purpose, the burden lies on him to prove his allegation.

The burden is not dicharged by showing that the father lived an extravagant or immoral life ; there must be a direct connection between the debt and the father's immorality.

HINDU LAW—DEBTS—IMMORAL DEBTS—SON'S LIABILITY.

Where in a suit for possession by a mortgagee it appeared that the deceased mortgagor lived a licentious life far beyond his means indulging in drink, rioting and prostitution and the plaintiff mortgagee lived in a portion of the same house which was occupied by the mortgagor and had full knowledge of the latter's mode of life and the manner in which he wasted his substance.

Held, that the mortgagor's son was under no obligation to discharge the debts incurred by the mortgagor for such purposes. (Shah Din and Le Rossignol, JJ.)

Jasvanti *v.* Tej Narain.—120 P.W.R. 1917; 41 I.C. 192 ; 10 P. R. 1918.

——*Debts—Son's liability—Immoral debts—Liability of estate after father's death—Price of liquor supplied to father.*

Held, that according to both *Mitakshara* and Dayabhaga schools of Hindu Law, joint family property in the hands of the son is not liable for the debt contracted by his deceased father for liquor supplied to the latter. (Clark, C.J. and Reid, J.)

Khagindra Nath *v.* Nanak Chand.—24 P.R. 1909; 218 P.L.R. 1908; 2 P.W.R. 1909; 1 I.C. 13.

——*Debts—Son's liability—Illegal and immoral debts—Accounts—Balance struck—Grandson.*

G. and his son *H* forming a joint Hindu family of which the former was the manager had an account with the plaintiffs in the course of which *G* struck a balance on which was based the present suit. It was instituted against *H* and his minor son *R*, *G* being dead. It appeared that during the period to which the account related *H* was living and working with his father and the business was a joint family business.

Held, the estate of defendants as well as their persons were liable for the debt. Gokal Kastur *v.* Amar Chand Jasraj, 9 Bom. L.R. 1889, *followed*. (Abdul Raoof, J.)

Hema Ram *v.* Chatta Ram.—2 Lah. L.J. 731.

——*Debts—Son's pious obligation—Debts incurred by father when he was minor.*

The pious obligation of a Hindu son to pay his father's debts extends to debts incurred by the father during his minority which, after attaining majority, he agrees to pay. (Abdul Raoof and Moti Sagar, JJ.)

Ram Rattan *v.* Basant Rai.—64 I.C. 121.

——*Debts—Son's liability—Father's Debts—Pious obligation.*

Held, that the *onus* of proving that debt was non-existent or illegal and that he was in consequence relieved from his pious obligations to discharge it was clearly upon the son, and he having failed to discharge it, the joint family property is liable. (Abdul Raoof and Moti Sagar, JJ.)

Ram Rattan *v.* Basant Rai.—2 Lah. 263 ; 3 Lah. L.J. 563; 64 I.C. 121.

HINDU LAW—DEBTS—SON'S LIABILITY.

——*Debts—Liability of successor—Liquidation of debts and contribution to funeral expenses.*

A person claiming a share in a deceased Hindu's property is bound to contribute proportionally to the amount required for his liquidating his debts and funeral expenses. (Robertson and Beadon, JJ.)

Thakar Singh *v.* Ujagar Singh.—26 P.L.R. 1913; 8 P.W.R. 1913; 18 I.C. 583.

FAMILY ARRANGEMENT.

——*Family arrangement—Registration—Partition—Compensation for improvement—Liability for debts.*

A family arrangement for the management and enjoyment of the joint property does not amount to partition. A document declaring existing facts does not mean to create or relinquish any title in immoveable property and therefore does not require registration. A plea that a suit for partition of a portion of the joint property is not maintainable cannot be raised for the first time before the Chief Court, specially when it not alleged in the grounds of appeal to that court. When a member of the joint Hindu family spends money without any objection on behalf of the other share-holders out of his personal income on the improvement of the joint property of which he is lawfully in possession he is entitled to be maintained in its possession at the time of the partition if possible and is entitled to get proportionate reasonable compensation for the part which he is obliged to give up. (Robertson and Beadon, JJ.)

Thakur Singh *v.* Ujaggar Singh.—26 P.L.R. 1913; 8 P.W.R. 1913; 18 I.C. 583.

——*Gift—Oral—Customary Law—Possession—Revocation—Equity and good conscience.*

On the 6th March 1896 one K. L. presented petitions, dated the 28th February 1896, before the Naib Tehsildar in which he stated that he had gifted certain property situate in two villages to two of his nephews and given possession to them. K. L. was examined and he repeated the contents of the petitions stating however that he had put the donees in possession on that day and prayed for mutation of names in their favour. On the 19th March 1896, he sent a petition in which he stated that his previous applications had been made on the understanding that he was to be paid Rs. 32,000 cash and that not having been paid that sum he wished to revoke the gift under which he had not yet delivered possession. By his subsequent conduct, till his death on the 13th April 1896 the door showed that he treated the property as his own and the gift as invalid. It was found that possession had not been passed to the donees.

Held, that the primary rule of decision in a case of gift in the Punjab is a custom, and according to it possession is ordinarily necessary to complete a gift. Under Hindu Law if the donor has done all he can to perfect his contemplated gift he cannot be compelled to do more.

HINDU LAW—GIFT.

As the donor had not done all that he could do to perfect the gift and had not actually given possession the gift was not complete.

Held, also, that it would have been contrary to equity and good conscience to have given the effect of a gift to the statement of an old man stricken with mortal disease, who so soon withdrew it and who died a little more than a month after—I. L. R XI, Cal. 121, at p. 135 (P. C.), *followed*. (Chatterji and Maude, JJ.)

Lila Kishen *v.* Hoa Ram.—45 P.R. 1901; 64 P.L R. 1901.

— *Gift—Actual and exclusive possession, whether necessary to validate a gift.*

According to Hindu Law, the giving of actual and exclusive possession is not necessary to the complition of a gift. When a person executed and registered a deed of gift in favour of his mistress and gave her the power to receive the documents after registration. *Held*, that the donor had done all that was possible to complete the gift and that, as the woman was living in the house at the time with the donor, she was given possession by the very act of execution of the deed. (Chatterji and Johnstone, JJ.)

Ram Charan Das *v.* Bhagwati.—52 P.R. 1908 ; 103 P.W.R. 1908.

— *Gift by a female in favour of next heir.*

Held, that a gift of property by a widow in favour of her deceased husband's daughter and daughter's son was valid under Hindu Law, as it merely accelerated the succession of the next heirs. (Reid, J.)

Balmokand *v.* Devi Das.—70 P.L.R. 1901.

— *Gift—Construction—Donee a widow—Nature of estate taken—Presumtion—Amendment of plaint—Practice.*

If a gift is made by means of a mutation, then in order to ascertain the intention of donor and the nature of the estate conveyed by the gift, a court is not confined to look to the mutation only, but can consider the previous and subsequent circumstances.

There is no presumption of law in favour of the estate conveyed to a Hindu widow being a limited one. 61 P. R. 1911, *followed*.

If the refusal to allow amendment of a plaint would tend to reduce litigation, a court is justified in refusing to allow amendment. (Broadway, J.)

Tulsi *v. Mst.* Jai Devi.—53 P.L.R. 1919.

— *Gift without possession—Acceptance—Registration of deed of gift—Aroras of Ferozepur City.*

Held, that the parties to the suit, Aroras of Ferozepur City, were governed by Hindu Law and not by custom ; it could not be said that owing to the family having acquired land by money-lending they belonged to an agricultural class.

HINDU LAW—GIFT.

Held, also that under Hindu Law delivery of possession is not essential to completion of gift, but that there must be acceptance on the part of the donee. The production of the Registered deed of gift may be some proof of acceptance but if the donor was dead when the deed was produced by the donee then no presumption arises from the fact of production, the donor and donee having lived together till the former's death. (Harris, J.)

Ram Chand *v.* Devi Chand.—21 P.L.R. 1901.

GUARDIANSHIP AND MINORITY.

——*Guardianship—Right to—Mother—Re-marriage—Effect of—Paternal grand father—Natural guardian when superseded—Right to give minor in marriage.*

Held, that under Hindu Law the mother is, after the father, the natural and legal guardian of her minor daughter and she does not lose her right by re-marriage in any case where such re-marriage is recognized as valid by custom. Mayne's Hindu Law, 8th edition, page 276; Ramakrishna Hindu Law, Vol. II, pages 406-407; *Mst.* Nur Bibi *v.* *Mst.* Mehran, 44 P.R. 1887; and Ganga Persad Sahu *v.* Jhalo, 38 C. 862, *relied on.*

Held, consequently, that unless it can be shewn that the welfare of the minor is being neglected by her mother it certainly does not appear to be permissible to appoint the grandfather as guardian of the person of the minor and to allow him to remove the girl from the custody of her mother. 28 I.C. 507; 18 I.C. 141; 29 A. 210, *relied on.*

Held, also, that the mother has a preferential right to select a bridegroom or at least that the grandfather cannot dispose of the girl in opposition to her wishes. 35 M. 728; 37 B. 18; 20 P.R. 1916; 22 B. 812, *relied on.* (Dundas, J.)

Mst. Indi *v.* Ghania.—1 Lah. 146; 1 Lah.L.J 203; 53 I.C. 783.

——*Guardianship—Testamentary—Uncle appointing guardian for his minor nephew by will—Validity of.*

Held, that under Hindu Law a man has no power to appoint a guardian of his minor nephew and any provision in a will made by a Hindu testator appointing a guardian of his nephew is not binding on Courts under section 7 (3) of the Guardians and Wards Act. (Chevis, J.)

Dhanpat Ram *v.* Prem Singh.—220 P.L.R. 1911; 220 P.W.R. 1911; 12 I.C. 452.

HINDU LAW—INHERITANCE.

(1) Principles. (2) Order of succession.
(3) Exclusion from inheritance.

——*Inheritance—Principles of—Ancestral property—Meaning of—Property inherited by two brothers from maternal grandfather—Nature of estate.*

'Ancestral' property in Hindu Law is to be limited to property which has come from certain male lineal ancestors as enumerated in the text-book.

HINDU LAW—INHERITANCE—PRINCIPLES.

Where two brothers inherit a certain property from their maternal grand-father, they hold it as joint tenants with right of survivorship and not as tenants in-common. (Kensington, C.J. and Shah Din, J.)

Karam Chand *v.* Jai Ram.—92 P.R. 1914; 224 P L.R. 1914; 124 P.W.R. 1914; 24 I C. 928.

——*Inheritance—Principles—Custom*—Brahmins *of Jallandhar City—Nephew not entitled to succeed in presence of uncle.*

Where a nephew of a *Brahmin* owning land and residing in Jullundur City, sued for a declaration of his right to remain in possession of the land mortgaged to him by one uncle in respect of which other uncle asserted his right to succeed and denied the genuineness of the encumbrances :

Held, that :—*Brahmins* who have *birt* as well revenue paying land are not agriculturists and, therefore, are strictly governed by Hindu Law in matters of alienation and succession. In a separated family, although holding joint-family property, when brothers are entitled to succeed under Hindu Law to the property of their deceased brother, a nephew of another cannot represent his own deceased father consequently he is unable to inherit any portion of his deceased uncle's property along with or in the presence his uncles. (Anderson and Robertson, JJ.)

Ralla Ram *v.* Malawa Ram.—123 P.W.R. 1911; 12 I.C. 308.

——*Inheritance—Principles—Custom or Hindu Law—Tarkhans of Amritsar City—Grand nephew.*

Held, that in matters of succession Tarkhans of Amritsar city are governed by Hindu Law which presumably governs non-agriculturists residing in a city. Consequently neither a great grand nephew, who is a *sakulya*, nor the widow of a grand nephew who has pre-deceased the widow of the last male-owner whose estate she wants to inherit, is entitled to succeed in the presence of a grand nephew who is a *spinda*. (Reid, C. J.)

Sardul Singh *v.* Karam Singh.—58 P.L.R. 1910; 30 P.R. 1910; 27 P.W.R. 1910; 5 I.C. 990.

——*Inheritance—Principles—Bunjahi Khatris of Rawalpindi City—No custom.*

The parties being non-land holding *khatris*, the *onus* was placed on the defendants to establish a special custom, opposed to Hindu Law, in favour of collaterals as against daughter's sons, and *held*, that the *onus* was not discharged and the near collaterals could not exclude daughters and their sons from succession to the property of the deceased. (Chatterji and Johnstone, JJ.)

Bura Mal *v.* Narain Das.—102 P.R. 1907; 78 P.W.R. 1907.

——*Inheritance—Principles*—Tewari Brahmins *of Amritsar City—Burden of proof—Nephew—Daughter's son.*

Held, that the parties to the suit, *Tewari Brahmins* of Amritsar City, being a non-agricultural class and having migrated from Oudh, must be presumed to have retained after immigration the law of their sect in the country of their adoption.

HINDU LAW—INHERITANCE—PRINCIPLES.

Found, that the plaintiff had failed to prove that by custom among *Tewari Brahmins* of Amritsar City a nephew of a childless proprietor excluded his daughter's son in matter of succession to his estate.

A family custom in derogation of the ordinary law cannot be supported on slender evidence of a few instances of modern date—I. L. R. XXIV All. 273 (P. C.); 116 P.R. 1893; 43 P. R. 1899; 108 P. R. 1888, *referred to.* (Reid and Harris, JJ.)

Mst. Jamna Devi *v.* Chuni Lal.—30 P.R. 1903; 85 P.L R. 1903.

— *Inheritance—Principles—Daughter's son—Nephew—Goldsmiths of Saharanpur.*

Held, that in the absence of proof of a special custom, the parties, Hindu Goldsmiths of Saharanpur, trading at Dagshai, were governed, in matters of succession, by Hindu law, under which a separated nephew is excluded by a daughter's son. 100 P. R. 1901; S. C. No. 257 of 1900, *referred to.*

A Counsel cannot bind a client by an admission on a question of law. 98 P. R, 1889, *followed.* (Reid, J.)

Baroo *v.* Makhan.—61 P.R. 1903; 134 P.L.R. 1903.

— *Succession—Daughter's son—Hindu gold-smith of Ambala City—Ancestral Property.*

The plaintiffs reversioners in the 5th degree, of a childless proproprietor, a Hindu Goldsmith, resident of Umbala city sued for a declaration that a gift of ancestral property by the proprietor in favour of his daughter's son was inoperative as regards their rights.

Held, that in the absence of proof of special custom the parties, Hindu Goldsmith of Ambala city were governed in matters of succession by Hindu Law and that the plaintiffs had no right to sue. 50 P. R. 1893; 24 P. R. 1900, s c., P. L. R., 1900 p. 437; 79 P. R. 1901, s. c, 107 P. L. R. 1901; 119 P. R. 1901; s. c 6 P. L. R. 1902; 103 P. R. 1902; 3 P. R. 1901; s c. P. L. R., 1900 p. 287, *referred to.*

It is for the reversioners in such a suit to clearly prove that the property gifted was ancestral. (Anderson and Robertson, JJ.)

Mangtu *v.* Chuni Lal.—51 P R. 1903; 174 P.L.R. 1903.

— *Inheritance—Principles of—Custom—Sarin Khatri of Lahore—Whether collaterals exclude daughters.*

Found, that no special custom contrary to Hindu Law exists among Sarin Khatris of Nayar Got of Lahore emigrated from, Kunjah in the Guzarat district, by which collaterals exclude Daughters; and that, all Sarin Khatris of Lahore City follow Hindu law in matters of succession. 143 P. R. 1882, *followed.*

Held, that, as, by Hindu Law, the daughter is an heir, a gift by a widow of a Sarin Khatri of Lahore of her husband's separate moveable and immovable property, in favour of his daughter cannot be challenged by his collaterals, as it simply amounts to acceleration of succession. C. A. No. 1818 of 1880 published as 249 P. W. R. 1912, *followed.* (Clark, C.J. and Reid, J.)

Karori Mal *v.* Jawala Devi.—258 P.W.R. 1912; 17 I.C. 510.

HINDU LAW—INHERITANCE—PRINCIPLES.

——*Inheritance—Principles—Custom—Proprietor dying heirless—Right of—Proprietors of his got taking possession of his estate—Incompetency of the proprietary body to oust them or to take any share.*

Held, that, the principle of customary Law as obtains in the Punjab is that in the absence of any special custom to the contrary in the event of a proprietor dying without heirs, his estate escheats to the Government.

Held, also, that where Jats take possession of the estate of an heirless proprietor of their *got*, the general proprietary body of the village are neither entitled to take any share without proving that they are equally entitled nor are they competent to oust the persons in possession without showing their own superior right. (Robertson and Chevis, JJ.)

Chambela *v.* Kundan.—142 P.L.R. 1913; 6 P.W.R. 1913; 18 I.C. 611.

——*Inheritance, principles of—Succession—Widow's estate—Custom—Khatri jagirdars of the Attock District, whether can question her husband's alienation.*

In a case, the parties to which belonged to a family of Khatri Jagirdars of Attock District, owning land but not Agriculturists.

Held, (1) That both under Hindu Law, and under agricultral custom, a widow is entitled to a life interest in her husband's estate and the *onus* of establishing a special custom to the contrary had not been discharged by the party alleging the same. That a special custom directly opposed to the personal Law of the parties requires much stronger evidence than a few instances, before it can be declared to exist. (2) That a widow is not competent to challenge any disposition of property by her husband. (3) That an agreement *inter vivos* between the brothers, whereby they declared that their widows shall not inherit a life estate but shall receive only a maintenance allowance of Rs. 25 per mensum was not admissible in evidence for want of registration. (Chevis and Le Rossignol, JJ.)

Moti Singh *v. Mst.* Jamna Devi.—8 P.R. 1916; 203 P.W.R. 1915; 32 I.C. 522.

——*Inheritance—Principles—Widow's right of—Collateral succession—* Brahmins, *Gurdaspur.*

Held, that there exists a custom among Brahmans of Tehsil Shakargarh, in District Gurdaspur, whereby a widow is entitled to succeed for her life to any property which her husband if alive, could have inherited. 15 P. R. 1906, *distinguished.* (Reid, J.)

Satgun *v.* Bhagwan Das.—6 P.W.R. 1909; 7 P.R. 1909; 22 P.L.R. 1909; 1 I.C. 91.

——*Inheritance—Principles of—Succession—Custom—Widow of deceased son's son—Nigar jats of Jullundur District.*

Held, that among Nigar *Jats* of the Jullundur *Tahsil* and District, the widow of a deceased son's son is entitled to take for her life-time, or until re-marriage equally with the son of the

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deceased proprietor. 30 P. R. 1909 ; 28 P. W. R. 1909, *referred to.* (Reid, C.J.)

Ishar Das *v.* *Mst.* Basanti.—53 P.L.R. 1911 ; 9 I.C. 310 ; 19 P.R. 1911 ; 110 P.W.R. 1911.

——*Inheritance—Order—Widow of pre-deceased son—Nephew—Preference—Custom.*

Held, that under the Hindu Law the widow of a pre-deceased son is not entitled to succeed to the property of her father-in-law in preference to a nephew and a gift by her of such property in favour of her daughter is invalid.

Held, also, that it is not proved that by custom the widow of a pre-deceased son, or a grand-daughter of the last male holder, is preferred to a nephew. (Broadway and Moti Sagar, JJ.)

Chint Ram *v.* *Mst.* Shib Devi.—4 Lah.L.J. 10; (1922) Lah. 207.

——*Inheritance—Relationship—Suit for possession of property on basis of alleged relationship—Onus—Secondary evidence of registered will admitted without demur—Objection to admissibility whether can be taken in appeal—Pleadings.*

The plaintiffs claimed to succeed to the property in dispute as the last male owner's heirs *abintesto* under the Hindu Law, on the allegation that they were the sister's sons of the father of the last male owner, and the defendant a minor daughter of the last owner's brother, denied *inter alia*, the relationship alleged by the plaintiffs.

Held, that the *onus* lay on the plaintiffs to prove their allegation with respect to the relationships and as they failed to discharge the *onus*, the suit failed.

Where a will which had been registered could not be found and for that reason the trial court allowed a party to produce secondary evidence thereof apparently without demur by the appellants. *Held*, that the appellants could not object to its admissibility on appeal more especially as the memorandum of appeal did not contain any objection to that effect. (Scott Smith and Shadi Lal, JJ.)

Hardeo Ram *v.* Parbati.—184 P.W.R. 1915; 31 I.C. 600.

——*Succession—Samanodakas who are—Strict proof of relationship essential.*

Held, that the agnatic relations of a deceased Hindu even beyond the 14th decree may be regarded as the *samanodakas* provided the agnatic relationship is clearly established.

Where, therefore, in a suit for a declaration that the alienation of land by the sister's son of the deceased shall not affect the plaintiffs' reversionary rights it appeared that the decree of plaintiffs' relationship to the deceased was not definitely ascertainable : *Held*, that under the circumstances the plaintiffs could not be regarded as the *samanodakas* of the deceased and had no right to exclude his sister's

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sons from succession to his estate. 32 All. 594 ; 7 A. L. J. 802 ; 6 Ind. Cas. 698, *distinguished*. (Rattigan, C. J. and Shah Din, J.)

Hira Singh *v.* Vir Singh.—111 P.L.R. 1918 ; 47 P.R. 1918 ; 20 P.W.R. 1918 ; 43 I.C. 460.

——*Inheritance—Principles of—Survivorship—Presumption of jointness rebutted—Will of joint property valid.*

Held, that, where it is shown that for many years past the brothers have nothing in common except their ancestral house in which they have lived separately and have remained separate in food, income, expenditure and worship the ordinary presumption of Hindu Law of every family being joint falls to the ground and the rule of survivorship does not apply in such a case and the will by one brother of his share of the joint property in favour of his distant collateral is not invalid. (Shah Din and Chevis, JJ.)

Sham Lal *v.* Chhajju Mal.—31 P.W.R. 1913; 76 P.L.R. 1913; 19 I.C. 51.

——*Inheritance—Partition by Hindu Jat of Ferozepur of his property between sons—Claim of son living in the house of father to the separate property left by father—Meaning of* shamil.

Held, that after partition of property by father between his sons, a son living with his father in the same house, but cooking and cultivating separately, is not *joint* within the ordinary Hindu sense of the word and cannot also be said to have remained *shamil* with his father according to the following provision of the *Riwaj-i-am*. *Jo beta bad taqsim ke apne bap ke shamil rahe, etc.*

Consequently the son is not entitled to inherit the separate property left by his father to the exclusion of his own other brothers. *Held*, also, that ordinarily an entry of a custom in a *Riwaj-i-am* unsupported by instances is of little or no value. *Held*, further, that where materials on the record to prove a fact are imperfect on both sides the court is justified in deciding it on probabilities. (Johnstone and Shah Din, JJ.)

Lal Singh *v.* Hira Singh.—84 P.W.R. 1910; 7 I.C. 352.

——*Succession—Daughters of father's brother, if heirs ?.*

Held, that according to the *Mitakshara* system of Hindu Law, a daughter of the uncle of the last male owner is not entitled to inherit the property, even though there are no other heirs. I. L. R. 28 All. 307; 13 A. W. N. 1906; 3 A. L. J. 87; I. L. R. 16 Cal. 367; 13 Ind. Jur. 385; 20 P. R. 1906; 44 P. W. R. 1906, *referred to*. (Rattigan, J.)

Mst. Bibi Sodhan *v.* Harsa Singh.—51 P.R. 1916; 155 P.L.R. 1916; 138 P.W.R. 1916; 34 I.C. 585.

—— *Inheritance—Principles of among females—Half sister if an heir.*

Held, that according to the Mitakshara School of Hindu Law only females expressly named in the text can inherit. The half sister of a deceased Hindu being not so named is not entitled to succeed to his estate, consequently, she is not competent to question an alienation made by his mother, the sole surviving heir. 20 P. R. 1906;

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44 P. W. R. 1906 ; C. A. No. 1598 of 1913 ; 3 All. 45 ; 5 All. 311 ; 51 A. W. N. 1883 ; 28 All. 307 ; 13 A. W. N. 1906 ; 3 A. L. J. 87.

(Shah Din, J.)

Malan *v.* Jiwan.—47 P.W.R. 1916 ; 32 I.C. 916.

——*Succession—Widowed daughter—Khattar whether entitled to take shares with the son.*

There is no proof of any custom amongst Khattars of *Tahsil* Fatehjang whereby a widow or an unmarried daughter takes a share with the sons. Where the estate is a considerable one, the widow and the daughter should be maintained in fitting circumstances, it is not sufficient to provide them simply with the bare necessities of life. (Kensington and Chevis, JJ.)

Mst. Roshnai Khanam *v.* Nawab Khan.—112 P.R. 1912; 32 P.L.R. 1913; 17 I.C. 903.

——*Inheritance—Order of—Half blood and full blood.*

Where the parties are governed by Hindu Law the brother and nephews of the whole blood exclude those of the half blood in the absence of proof of a custom to the contrary. (Broadway and Abdul Qadir, JJ.)

Har Bhagwan *v.* Hukam Singh.—3 Lah. 242; 4 Lah.L.J. 245; (1922) Lah. 243; 68 I.C. 769.

——*Succession—Half sister—Alienation by mother—Half-sister, if can object.*

Held, that according to the Mitakshara School of Hindu Law only females expressly named in the text can inherit. The half-sister of a deceased Hindu being not so named is not entitled to succeed to his estate, consequently, she is not competent to question an alienation made by his mother, the sole surviving heir. 20 P. R. 1906; 44 P.W.R. 1906; C. A. No. 1598 of 1913; I. L. R. 3 All. 45; I. L. R. 5 All. 311; 51 A. W. N. 1883; I. L. R. 28 All. 307; 13 A. W. N. 1906; 3 A. L. J. 87, *referred to.* (Shah Din, J.)

Malan *v. Mst.* Jiwan.—47 P.W.R. 1916; 32 I.C. 916.

——*Inheritance—Sister, if an heir.*

Under the Mitakshara school of Hindu Law a sister is not an heir at all to her brother, and consequently cannot be brought on the record as the heir and the legal representative of the deceased brother to continue a suit or appeal. (Chevis and Abdul Raoof, JJ.)

Shambhu Nath *v Mst.* Ralli.—25 P.W.R. 1919; 52 I.C. 591.

——*Succession—Right of sisters.*

Under Hindu Law sisters can succeed as *bandhus.* 180 P. R. 1889; 20 All. 191; 8 Mad. 187 (130) and 14 Mad. 149, *referred to.* (Broadway and Abdul Raoof, JJ.)

Nanak Gir *v. Mst.* Kishen Kaur.—161 P.R. 1919; 53 I.C. 815.

——*Inheritance—Order of succession—Issue—After born son—Child in the womb.*

If, a Hindu plaintiff proves that at the date of sale he was *en ventre sa mere* it is possible that his claim for pre-emption might

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have some force for according to Hindu Law a child begotten has if subsequently born all the rights of a child in existence. 16 M. 76; 2 M. L. J. 244; 55 P. R. 1903; 117 P. L. R. 1903; 14 Ind. Cas. 60; 173 P. W. R. 1912, *referred to.* (Rattigan and Beadon, JJ.)

Mst. Mangli *v.* Sobha Singh.—1 P.L.R. 1914; 218 P W.R. 1913; 20 I.C. 272.

——*Succession—After born son—Divesting of widow's estate—Period when divesting takes effect.*

A Hindu died possessed of a house and a site. His widow sold the property some days after the demise of her husband. The plaintiff, who was in his mother's womb at the time of his father's death and was born five days after the sale by his mother, sued for possession, contesting the validity of the sale effected by his mother. The sole question, on which the decision of the case rested, was whether the widow's estate was divested from the date of the plaintiff's birth or from the date of his father's death, or, in other words, whether a son's rights in the estate commenced at birth or while he was in the mother's womb.

Held, following 7 M I. A 169, that the widow's estate was divested only on the plaintiff's birth, and that she was the owner of the property on the date of the sale and was competent to alienate it for necessity. 7 M I. A. 169, *followed*. 9 B L. R. 377; 16 M. 76; 30 I C. 272; 8 M. 89; 33 B. 88; 12 B. 105; Paragraph 499 of Mayne's Hindu Law, 8th edition; West and Buhler's Digest of Hindu Law, 3rd edition, volume 1 at page 803, *referred to.* (Scott Smith and Martineau, JJ.)

Hira *v.* Buta.—1 Lah. 128; 1 Lah. L. J. 36; 56 I.C. 256.

——*Inheritance—Adoption—Rights of members of natural family of the adopted person in the property of the adoptive family.*

Where a person has been removed from his natural family by adoption, his heirs should be sought for among those related to him in his new family and relationship in his natural family is of no account in the matter of succession.

The property in suit belonged to one L. D. who adopted M. L. as his son. It was inherited by M. L's grandson's widow in due course of succession. On her death dispute arose between her daughter and a collateral of M. L. to succeed the property left by the widow.

Held, that M. L. being affiliated to L. D's family by adoption his collateral in the original family had no right to inherit the property in dispute.

Where it was urged by the appellant that the Lower Court had wrongly refused to admit in evidence documents on the file of a previously decided suit and the appellant when asked to state what documents he required to be printed did not take any notice of the matter, the Chief Court under the rules of practice and on the objection of counsel for respondent refused to refer at the hearing

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of the appeal to the file of the suit previously instituted. (Anderson and Harris, JJ.)

Bhikhu Mal *v.* *Mst.* Chando.—79 P.L.R. 1902.

——*Inheritance—Adopted son—Kritrima form—No right to collateral succession in adopted family.*

Held, that under Hindu law it is only in the case of an adoption taking place in the Dattaka form that the adopted son has the right of collateral succsssion. In case of a customary adoption an adopted son ordinarily succeeds only to the estate of his adoptive father as the relationship between the two is a purely personal one. 113 P. L. R. 1908, *referred to*. (Shah Din J.)

Jiwan Mal *v.* Jamna Das.—67 P.L.R. 1911; 232 P.W.R. 1911; 10 I. C. 822.

— *Succession competency of adopted son to succeed collaterally—Gujares of Ludhiana tahsil.*

Found that by custom among Gujar of Ludhiana Tahsil an adopted son does not succeed collaterally. (Chevis, J.)

Buta *v* Maula.—63 P. L. R. 1913 ; 19 I. C. 430 ; 14 P. W.R. 1913.

— *Inheritance—Grandson whether as adopted son or grandson no difference—Specific Relief Act, S. 42.*

Held, that, separate nephews of a deceased Hindu governed by the Mitakshara Hindu Law are not immediate reversioners and their interests are remote future and contingent in the presence of his widow, daughter and daughter's son, and that, therefore, under section 24 of the Specific Relief Act I of 1887 they have no *locus standi* to maintain a suit to challenge the existence or validity of A's adoption by the deceased, as A. is entitled to succeed to the deceased's property as absolute owner after his mother's death.

PER RATTIGAN, J.—The widow and daughter are quite competent to relinquish their prior title in favour of A. (Smith, Elsmie, Barkley and Rattigan, JJ.)

Barkat Ram *v.* Jagat Ram.—249 P.W.R. 1912; 17 I.C. 379 (F.B.)

——*Succession to Rozina dues—Adopted son—Darbar Sahib, Amritsar—Hindu Law and the definition of son in the General Clauses Act, applicability of.*

Held, that succession to the property or offerings of a Religious Institution is to be governed by the custom and practice relating thereto. So according to the Dastur-ul-Ammal prepared in 1859, of the Sikh Temple, Darbar Sahib, Amritsar, the *Rozina* (annuity) allowed out of the income of the Temple, to a *Pujari* goes on his death in the 1st instance to his male descendant ; and that according to its provisions the term male descendant does not necessarily include an adopted son. 106 and 140 P. R. 1892; C. A. Nos. 377 of 1884 and 715 of 1894, unpublished *referred to*. (Kensington and Johnstone, JJ.)

Hari Singh *v.* Gurbakhsh Singh.—94 P.R. 1909; 95 P.W.R. 1909; 130 P.L.R. 1909; 4 I.C. 896.

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——*Daughters—Succession of daughters—Father's estate.*

Where the members of a Hindu family have always lived in a town and have taken no agricultural pursuit, the mere fact of their having invested money in land does not make it probable that they have altered their mode of life by adopting agricultural customs, and very clear and convincing evidence is necessary to establish a rule of succession opposed to their personal law. An entry in a Riwaj-i-am as to the existence of any custom is not of much value if it is not supported by instances. Among Hindus governed by Hindu Law, a daughter is debarred from inheriting her father's share of the joint family property, but if separation has taken place before his death, she is entitled to succeed to his estate. According to Hindu Law, presumption is that every Hindu family is joint, but admissions of the following description by a Hindu denying separation are quite inconsistent with the theory that the family was joint at the time the admissions were made. "(*a*) Mussammat Atro, widow of his deceased brother C, holds possession of his share as heir." "(*b*) She is his heir." "(*c*) C died sonless and his widow is Mussammat Atro. Hence mutation of names in favour of Mussammat Atro in respect of inheritance of C be sanctioned." "(*d*) C, the mortgagee, my real brother, died and Mussammat Atro his widow succeeded him and is in possession of his property, &c, &c." (Reid, C. J. and Beadon, J.)

Rukman *v.* Kirpa Devi.—338 P.L.R. 1913 ; 209 P.W.R. 1913 ; 22 I.C. 134.

——*Daughters preferred to collaterals.*

Held, that among Hindu agriculturist Rajputs of Kangra District no custom, contrary to Hindu Law, exists according to which daughter is not entitled to succeed to her father's self-acquired property in the presence of his male near collaterals living in a different village. 64 P. R. 1893, *followed*.

OBITER.—*Held*, that where no definite customary rule of succession can be found, resort should be had to the personal Law of the parties. 110 P. R. 1906; 59 P. W. R. 1907, *followed*. (Lal Chand, J.)

Nidhu *v.* Ram Singh.—2 P.R. 1909; 25 P.W.R. 1909; 1 I.C. 457.

—— *Succession—Father's sister's sons—Bandhus—Mitakshara.*

Where the father's sister of the last male owner and her sons sued for a declaration that the alienation made by the mother of the last male owner in favour of the defendant shall not affect their reversionary rights.

Held, that under the Mitakshara School of Hindu Law the plaintiffs were entitled to inherit as *bandhus* and could, therefore, contest the alienation. (Rattigan and Shadi Lal, JJ.)

Sundar Singh *v. Mst.* Gurdevi.—163 P.W.R. 1915 ; 31 I.C. 27.

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——*Inheritance—Great grandfather's daughter's son not excluded by sister's daughter.*

The weight of authority is in favour of the view that a Hindu sister's daughter cannot succeed *as bandhu* to her mother's deceased brother in Northern India, and the great-grandfather's daughters son of the deceased is a preferable heir. 11 M. I. A. 386; 22 All. 338; 8 Mad. 107; 18 Mad. 168; 5 Mad. 241; 14 Mad. 149; 21 Mad. 263, *referred to.* (Robertson and Rattigan, JJ.)

Mangat Ram *v* Devi Chand.—20 P.R. 1906.

——*Mitakshara—Succession—Sister's son and grandson whether baudhus.*

Under the Mitakshara School of Hindu Law a sister's son and grandson are Baudus and entitled to succeed. (Scott Smith and Leslie Jones, JJ.)

Bhag Mal *v.* Bhagwan Das.—125 P.W.R. 1917; 11 P.R. 1918; 41 I.C. 636.

——*Succession—Bundhus—Father's sister's son.*

In places where the Mitakshara system of Hindu Law prevails, the father's sister's sons of the last male owner are heirs.

The presumption is in favour of the continuance of life and the onus of proving the death of a person lies on the party who asserts it.

Plaintiffs sued for possession of certain land of which their maternal uncle's son S., was the last male owner. Upon the death of S. the land was held by his mother A., on whose death the village proprietors took possession. A was said to have died in May 1902 and the present suit was instituted on the 5th May 1914.

Held, (1) That according to Hindu Law the plaintiffs were entitled to succeed to their maternal uncle's son as *bandhus*; (2) that there was no presumption that A. died before the 5th May 1902: (3) that the onus of proved that A. died before the 5th May 1902 lay upon the defendants; (4) that in the absence of any proof of the exact date of death the suit was within time. (Scott Smith and Leslie Jones, JJ.)

Tani *v.* Rikhi Ram.—2 Lah. L. J. 481; 114 P.L.R. 1920; 56 I.C. 742.

——*Inheritance—Bandhus—Father's* Father's *son's daughter's son-Sister.*

Father's father's Son's daughter's Son is a bandhu and succeeds in preference to a sister. (Broadway and Abdul Raoof, JJ.)

Tirath Ram *v. Mst.* Khanan Devi —1 Lah. 588; 60 I.C. 101.

——*Inheritance—Female Bandhus.*

According to the Mitakshara system of Hindu Law, a daughter of the uncle of the last male owner is not entitled to inherit the property, even though there are no other heirs. 28 A. 307; A. W. N. (1906) 13; 3 A. L. J. 87; 16 C. 367; 13 Ind. Jur. 385; 20 P. R. 1906; 69 P. L. R. 1906, *referred to.* (Rattigan, J.)

Bibi Sodhan *v.* Harsa Singh.—51 P.R. 1916; 138 P.W.R. 1916; 155 P.L.R 1916; 34 I.C. 585.

——*Inheritance—Daughter—Property obtained in gift by her grandfather—No reversion to donor's heir—No exclusion of female descendants of donee by male descendants of donor.*

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Held, that where a landowner brings in his relative and shares his acquired proprietary holding with him, his act is in the nature of a gift. If afterwards the donee happens to die without leaving any male lineal descendant the donated land goes to the donee's female descendants in the direct line and not to the descendants of the donor. 2 P. R. 1892 ; 137 P. R. 1908, *referred to.* 19 P. R. 1903, *distinguished.* (Reid, C. J. and Robertson, J.)

Gurdit Singh *v.* *Mst.* Prem Kaur.—76 P.L.R. 1909 ; 84 P.R. 1909 ; 118 P.W.R. 1909; 3 I.C. 604.

——*Inheritance—Daughters—Collaterals*—Sarsut Brahmins *of Gopalpura village, Amritsar District.*

Held, that the parties to the suit, *Sarsut Brahmans* of Gopalpura village of Amritsar District, though owned land for generations, were governed by Hindu Law and not by custom and that daughter's sons excluded near collaterals according to Hindu Law. (Chatterji and Kensington, JJ.)

Amin Chand *v.* Tirath Ram.—95 P.L R. 1908.

——*Inheritance—Mitakshara—Daughter-in-law*—Khatris *of Akalba village, District Ludhiana.*

In the absence of custom to the contrary the widow of a predeceased son is not entitled to inherit under Hindu Law, Mitacshara, as applicable to the Punjab, property left by her father-in-law in the presence of collaterals related to him in the 4th degree. Nor does she take by survivorship, not being a joint owner with her father-in-law.

Held, that no custom was proved to exist amongst the parties to the suit who were *Khatris* of Akalba village in the Ludhiana District, under which a widow of a predeceased son could succeed to the property of his father-in-law. (Robertson and Harris, JJ.)

Radha Mal *v* *Mst.* Kirpi.—100 P.R. 1901.

——*Succession—Bandhus—Sister—Daughter's son of uncle—Preference.*

Held, that the defendant being the father's father's son's daughter's son is a *Bandhu* of Harnam Das according to Hindu Law and has a better title than the plaintiffs, a sister, and she is not entitled to succeed as against him. 67 P. L. R. 1911, Also Mayne's Hindu Law, 8th Edition, page 744, paragraph 584 and Mulla's Hindu Law, 3rd Edition, pages 58 and 59, *followed*. 161 P.R. 1919, *explained*. 78 P. R. 1902, *referred to.* (Broadway and Abdul Raoof, JJ.)

Tirath Ram *v.* *Mst.* Kahan Devi.—3 Lah. L. J. 35 ; 1 Lah. 588.

——*Inheritance—Daughter's daughter or paternal grand-nephew—Widow—Power of.*

A Hindu widow in possession of her husband's property cannot, by any act of donation on her part, confer on the next heir, her daughter, any greater or more extensive rights than she herself posseses.

In the ordinary way a daughter who is under Hindu Law the heir of her father cannot, when succeeding as such heir to her father from the stock of a fresh descent, and as a result the sons of his

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father's brother's son (who are the *sapindas* of her father) would be entitled to succeed in preference to her daughters who can claim only as *bandhus* of their deceased grandfather.

In a case where a *muafi* is resumed, and a settlement is thereafter made with a particular person, the action of the Settlement Authority does not affect or alter the position of the settlee with regard to the property. (Kensington, C. J. and Rattigan, J.)

Mst. Kishan Devi *v.* Shibsaran.—77 P.R. 1914 ; 217 P.L.R. 1915 ; 25 I C. 697.

—*Succession—Bandhu—Brother's daughter—Bengal and Benares schools.*

Held, that according to Hindu Law a brother's daughter is not a *bandhu* with rights of inheritance. 3 A. 45; 5 All. 311; 28 A. 187; 28 A. 307; 16 C. 367 (370); 51 P. R. 1916; 161 P. R. 1919; 180 P. R. 1889; 20 A. 191; 52 I. C. 591; 3 L. L. J. 35; 8 M. 107; 14 M. 149, *referred to.* (Leslie Jones and Wilberforce, JJ.)

Mst. Sujan Devi *v.* Jagiri Mal.—1 Lah. 608 ; 3 L. L J. 32.

—*Inheritance—Brothers—Daughters—Aroras of Amritsar—Custom not proved.*

Held, (1) that the *onus* of proving a custom opposed to Hindu Law, under which the daughters were excluded from inheritance, among Aroras, high caste Hindus of Amritsar, lay heavily on the party alleging the same ; (2) that the custom set up in derogation of the personal law of the parties was not established by the judicial precedents and instances cited. (Robertson and Chevis, JJ.)

Radho *v.* Harnaman.—99 P.R. 1907. ;167 P.L.R. 1908.

——EXCLUSION.

—*Inheritance—Exclusion from—Ground for—Blindness—Relationship with murderer of deceased—Effect of.*

Under the Hindu Law in order to disqualify the heir by reason of lameness, it must be shown that the lameness is congenital and complete.

An heir is not disqualified from succeeding to the property of his cousins by reason of his brother having been their murderer, notwithstanding that he and his brother constituted a joint Hindu family particularly where the heir was a minor at the time of the murder. The maxim "*memo exsue delicto Melior rem suam conditioner face potest* :" is not applicable to such a case. (Shadi Lal and Le Rossignol, JJ.)

Rawel Singh *v.* Jai Ram.—69 P.R. 1919, 52 I.C. 1919.

—*Inheritance—Exclusion—Grounds of—Party to murder—Descendants of—Rights of.*

Held, that it is compatible with justice, equity and good conscience that the exclusion of a murderer from the inheritance of the man whom he had murdered must be taken to include his direct lineal descendants.

Held, therefore, that as the plaintiff's father had murdered his brother with the sole object of securing his property, they are excluded from inheriting the property of their deceased uncle as their

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succession is opposed to public policy. 41 P. R. 1906; Civ. App. 252 of 1919, *followed*. 15 W. R. 70; 17 C. W. N. 341; 74 P. R. 1900; 27 M. 591; 3 M. 100, *referred to*.

Held, also that a deed registered at a rigistry office, where no part of the property concerned is situate, is inadmissible in evidence, 29 I. C. 413; 41 C. 972 (988) P. C.; 49 I. C. 543; 26 C. W. N. 369; 44 P. R. 1898, *referred to*.

Held, further, that much technical proof may not be necessary for a Hindu will, but there must be some evidence to show that a document purporting to be a will by a Hindu was executed by him. (Broadway and Abdul Qadir, JJ.)

Har Bhagwan *v.* Hukam Singh.—3 Lah. 242; 4 Lah. L.J. 245; (1922) Lah. 243; 68 I.C. 769.

— *Inheritance—Hindu Law or custom Widow's estate—Effect of unchastity of widow.*

There is no general custom in the Punjab by which a Hindu widow forfeits her husband's estate, when vested in her, by an Act of unchastity. In the absence of a proved special custom, where the parties are Hindus, Hindu law applies and according to that law the widow's estate is not forfeited. 107 P. R. 1888; 5 Cal., 776 (P. C.,) *followed*. (Robertson, J.)

Mst. Atri *v.* Didar Singh.—76 P. R 1901.

— *Inheritance Unchastity is no disqualification for the inheritance of a widowed mother.*

Held, that in the absence of any custom to the contrary among Hindu Agricultural tribes, the principles of Hindu Law, that the unchastity of the widow mother of a deceased proprietor who is in possession of his estate on a life tenure does not work a forfeiture of her interest in that estate, applies I. L. R. 32 All. 155; I. L. R. 31 Mad. 100, *followed*. (Shah Din and Scott-Smith, JJ.)

Thakri *v.* Gurdit Singh.—57 P.W.R. 1913; 120 P. L. R. 1913; 19 I.C. 253.

— JOINT FAMILY.

— Joint family—What is—Persona—Construction though one member is dead—Partner. *See* Joint Family—Manager—Death of.

61 P.R. 1915; 136 P.W.R. 1915; 31 I.C. 45.

— Joint family—Alienation and family settlement—Distinction—Test. *See* Family Arrangement.

110 P.W.R. 1914; 3 P.R. 1915; 215 P.L.R. 1914; 25 I.C. 480.

— *Alienation by one member without consent of other members—Mitakshara—Suit for cancellation of alienation, whether maintainable—Jurisdiction—Value of such suit.*

The rule in Madras and Bombay that an alienation by one member of a joint family is valid to the extent of the alienor's own interest in the property is not followed in Bengal and the Punjab, in which Provinces the rule has been accepted that in cases governed by the *Mitakshara* law, one sharer has no authority without the

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consent of his co-sharers, to dispose of his undivided share in order to raise money on his own account, and not for the benefit of the family. Where, however, such disposition does take place, either by gift, sale, mortgage, etc., the other members of the family have the right to sue for the annulment of such alienation. A similar rule is observed in the United Provinces. 3 B. L. R. 31 (F. B.); 12 W. R. 1 (F. B.); 153 P. R. 1883; 5 A. 384; 6 C. W. N. 651, *referred to*. J., member of a joint Hindu family executed a mortgage in favour of *P*. in respect of his share of two houses for a consideration of Rs. 2,000; R, another member of the family, brought a suit to annul the mortgage on the ground that it was executed without consideration and necessity, and was ultra vires and illegal, as J had no legal right to mortgage his share as a co-parcener in the joint property. *Held*, that R. was entitled to have the mortgage set aside as a mortgagee, but that the deed would remain operative as a bond so far as J was personally concerned. (Rattigan, J.)

Piari Lal *v.* Ram Chand.—112 P.W.R. 1911; 21 P.R. 1912; 11 I.C. 443.

——*Joint family—Alienation by co-parceners of self-acquired property.*

Held, that a member of a Joint Hindu Family is not restricted from alienating his self-acquired property. I. L. R. 20 All. 267, *followed*. (Rattigan and Williams, JJ.)

Mst. Nehal Devi *v.* Kishore Chand.—11 P.L.R. 1911; 97 P.R. 1910; 142 P.W.R. 1910; 8 I.C. 999.

——*Joint family—Alienation by one co-parcener not for family benefit liable to annulment.*

Held, that an alienation by one of the coparceners of a joint Hindu family not made for the benefit of the family is liable to annulment in its entirety. 21 P. R. 1912, *followed*. (Le Rossignol and Wilberforce, JJ.)

Munshi Lal *v.* Sohan Lal.—3 Lah.L.J. 137.

——*Joint family—Mortgage of undivided share of a member—Subsequent partition—Rights of mortgagee.*

K, owner of only $\frac{1}{4}$th share, mortgaged $\frac{1}{2}$ of three shops and a *haveli* which formed a part of the estate. After the mortgage there was a suit between the co-sharers which was settled by arbitration and two *kholas* valued at Rs. 940 were awarded to *K*. On a suit brought by the mortgagee to recover the mortgaged-debt: *Held*, that the only part of the estate against which the mortgagees could proceed was that which fell to the mortgagor on partition. 1 I. A. 106; 21 W. R. 233; 101 P. R. 1894, *followed*. (Chevis and Le Rossignol, J.)

Prem Shah *v.* Kahn Chand.—48 P.L.R. 1916; 128 P.W.R. 1915; 30 I.C. 31

——*Alienation by father—Joint family property—Immoral and illegal debt—Objections by son—Acquiescence by son.*

An alienation of joint ancestral family property by a father for an illegal or immoral debt will not be binding on the son. But

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where the son, after objections, acquiesces and adopts them, he then loses his right to contest the alienations. (Johnstone and Rattigan, JJ.)

Diwan Shib Nath *v.* Alliance Bank of Simla.—3 P.R. 1915; 215 P.L.R. 1914; 110 P.W.R. 1914; 25 I.C. 480.

——*Alienation—Father—Necessity—Burden of proof.*

A vendee from the father, in a joint Hindu family must, as against the sons, make out legal necessity as to that part of the consideration which is not in the nature of antecedent debts. Legal necessity and family benefit must be proved positively and cannot be assumed (Abdul Raoof and Harrison, J.J.)

Laik Shah *v.* Dina Nath.—63 I.C. 515.

——*Joint family—Father—Powers—Alienation by father—Mortgagor selling equity of redemption without necessity—Land yielding a little profit—Old debt.*

Ancestral land was mortgaged, and on a sale of equity of redemption, the son of the mortgagor sued to set aside the sale. It was found that the land yielded little or no profit and the mortgages were effected for necessity, and at the time of sale the mortgagor probably foresaw that it would be impossible for him or his descendants to redeem the mortgage. *Held*, that the sale was not open to objection. (Johnstone and Rattigan, J.J.)

Chet Singh *v.* Allahditta.—31 P.W.R. 1912; 47 P.L.R. 1912, 13 I C. 877.

——*Joint Family—Alienation—After born son—Suit by.*

Held, that a son conceived is the same as the son borne for all purposes, and that if he be born alive he has a right to challenge alienations or other acts affecting his rights in the joint family property, and that any other son born subsequently, unless the former has in the meanwhile consented to the act impugned, can also challenge it. 16 M. 76; 33 A. 654, *referred to*—Also Mulla's Hindu Law, 3rd edition, page 242 and Mayne's Hindu Law, 8th edition page 461. (hevis and Scott-Smith, JJ.)

Dwarka Das *v.* Krishan Kishore.—2 Lah. 114; 3 Lah. L. J. 349; 61 I. C. 628.

——*Joint family—Alienation—Sale of ancestral house by father—Objection by a son—Burden of proving immorality of the transaction—Vendee to prove necessity—Expiry of 20 years—Circumstantial evidence to prove necessity.*

Held, that where a Hindu son attacks the sale of ancestral house by his father it lies on the former to establish immorality of the transaction by specific facts if he is to succeed in freeing himself from the liability to pay his father's debts, and that the sale cannot be maintained as a sale unless the vendee proves necessity. 53 P. R. 1901; I. L. R. 31 All. 176, *referred to.*

But it would be unfair to expect precise proof on the point some 20 years after the alienation. (Shadi Lal and Le Rossignol, JJ.)

Ram Lubhaya *v.* Gopal Das.—151 P.L.R. 1915; 78 P.W.R. 1915; 29 I C. 891.

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——*Joint family—Alienation by father—Suit by son for possession—Limitation running of, from vendee's taking possession—Nature of possession necessary.*

In a suit under the *Mitakshara* Law for possession of land by annulment of illegal sales by his father, the son's only cause of action is the taking of possession by the vendee of what was the son's joint share of the family property, and his suit ought to be brought within 12 years of such adverse possession.

It is not necessary in order to obtain possession that the purchaser should step on to the land at all. The physical possibility of the buyer dealing with the thing exclusively as his own is all that is necessary. (Johnstone and Scott Smith, JJ.)

Bahadur Chand *v.* Nina Mal.—14 P.R. 1915; 231 P.L.R. 1914; 133 P.W.R. 1914; 25 I.C. 35.

——*Alienation by father—Suit to set aside—Burden of Proof.*

In a case were a plaintiff sues his father and alienee from him for a declaration that the alienation would not bind him, the court should not expect of a zemindar exceptionally careful management or thrift. It should simply see whether there has been wanton waste of reckless extravagance or not. (Johnstone, J.)

Budh Singh *v.* Bir Bal —25 P.L.R. 1911; 9 I. C. 544. 40 P. W. R. 1911.

——*Joint family—Alienation by father—Legal necessity—Son's right to impeach.*

In the absence of a finding that a father has been recklessly extravagant, or wantonly wasting his property, the vendee of the property from the father is not required to prove that the previous debts were contracted for necessary purposes he has only to prove their existance. The son cannot impeach such a sale. (Martineau, J.)

Jagat Singh *v.* Gauda Singh.—(1922) Lah. 301 69 I. C. 47.

——*Joint family—Alienation—Father—Suit by sons to set aside.*

In a suit by Hindu son to set aside alienations of joint family property by his father, if it is found that the sales are not valid and binding on the family the plaintiff would be entitled to a decree that his rights as coparcener are not affected by the alienation. The decree in favour of the plaintiff should not be made conditional on his refunding his share of the purchase money. 39 A. 43, 30 A. 352; 53 P. R. 1901, *referred to.* 11 C. 396, *not followed.* (Le Rossignol and Campbell, JJ.)

Badam *v.* Madho Ram.—2 Lah. 338; (1922) Lah. 241; 66 I.C. 19.

——*Joint family—Alienations—Father—Son's suit to set aside—Form of relief.*

A Hindu son is entitled to set aside an alienation by his father of ancestral property which has not been affected for the payment of an antecedent debt or for any family necessity. 53 P. R. 1901; 28 A. 328; 39 A. 485, *referred to.* In a suit for possession of the

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properties so alienated the son is not bound to refund the purchase money but can claim possession of the property. 11 C. 396 ; 32 I. C. 891, *referred to.* (Broadway and Martineau, JJ.)

Kali Charan *v.* Jaggn.—67 I. C. 89.

——*Joint family—Manager—Mortgage—Decree—Form of—Decree against assets of deceased martgagor—Necessity—Charge on land.*

The plaintiff, mortgagee, sued the defendants on a mortgage executed by their father and uncle and prayed for a decree against the defendants personally and the land mortgaged. On appeal the Divisional Judge granted decree against the defendants personally as heirs of the mortgagors but finding that the mortgage was not for necessity refused to pass decree against the mortgaged land. *Held*, that the decree should not have been passed personally against the defendants, for they were only liable to the extent of the assets of the mortgagors in their hands. (Rattigan and Leslie Jones, JJ.)

Arura *v.* Balak Ram.—157 P.L.R. 1915; 147 P.W.R. 1915 ; 30 I.C. 528.

—JOINT FAMILY—ALIENATION—WIDOW.

——*Alienation—Widow—Legality.*

Widow's power of alienation does not depend on the power of alienation of the reversioners ; her powers are not unlimited even though there are no such reversioners. (Broadway and Abdul Raoof, JJ.)

Tirath Rani *v.* Kahan Devi.—1 Lah. 588; 60 I.C. 101 ; 3 Lah.L.J. 35.

——*Joint family—Alienation—Widow of arora predeceased son holding her husband's share by way of maintenance, alienation by, even for necessary purposes.*

Held, that when among Hindus (Aroras of Multan) governed by Mitakshra Hindu Law the widow of a predeceased son receives the share of her husband in the joint family landed or other immoveable property she does so obviously for the purpose of maintenance only, and consequently she is incompetent to alienate it even for necessity. (Rattigan and Leslie Jones, JJ.)

Chandan Mal *v. Mst.* Wasindi.—92 P.R. 1915; 168 P.W.R 1915; 31 I.C. 541.

——Alienation by widow—Consent of reversioners—Validity—Consent of next reversioners effect on remoter reversioners. *See* Hindu Law, Widow, Alienation.

209 P.L.R 1914: 150 P.W.R. 1914; 91 P.R. 1914; 24 I.C. 417.

——JOINT FAMILY—CONTRACT.

——*Joint family—Contract by the managing member—Right to sue—Contract by some of the members only.*

If a contract is made on behalf of a joint Hindu family by the managing member, no other member of the family is competent to interfere in that contract or to give receipts in connection therewith. 15 C. W. N 321 (P. C.), *referred to.*

But where the contracting party had no reason to believe that the contract was other than a contract with all of the four

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joint brothers, he was fully justified (until notified otherwise in) making payments to any one of those four brothers on behalf of the family. (Rattigan and Shah Din, JJ.)

Sirdar Kirpal Singh *v.* Sant Singh.—71 P R. 1911. 30 P.L.R. 1912; 205 P.W.R. 1911; 13 I.C. 305.

——*Joint family—Co-parcener—Payment of debt made to son—When discharge of debt.*

When in the case of a Joint Hindu family consisting of father and son debts due to the family have been paid sometimes to the father and sometimes to the son a debtor is absolved from his liability when he has made payment of the debt to the son. (Shah Din, J.)

Jahangir *v.* Ganda Shah.—69 P L.R 1911; 230 P.W.R. 1911; 10 I C. 838.

——*Joint family—Co-parcener—Will—Valid.*

Held, that, where it is shown that for many years past the brothers have nothing in common except their ancestral house in which they have lived separately and have remained separate in food, income, expenditure and worship the ordinary presumption of Hindu Law of every family being joint falls to the ground and the rule of survivorship does not apply in such a case and the will by one brother of his share of the joint property in favour of his distant collateral is not invalid. 3 Indian Cases. 234, *followed*. (Shah Din and Chevis, JJ)

Sham Lal *v.* Chhajju Mal —31 P.W.R. 1913; 76 P.L.R. 1913; 19 I.C. 51.

——JOINT FAMILY—FATHER.

—— *Joint family—Father—Compromise by.*

A *bona fide* compromise of a doubtful claim, entered into by the father as manager of the family, binds the minor sons. (Scott-Smith and Leslie Jones, JJ.)

Shambhu Nath *v.* Dwarka Das.—60 I. C. 524.

—— *Joint family—Father—Decree for money against—Execution sale of entire property including son's interest—Debt not illegal or immoral.*

Held, that a money decree against a Hindu father, for a debt which was neither illegal, nor immoral, and whether incurred for family purposes or not, may be enforced in his life-time by an execution sale of the entire co-parcenary estate and is binding on his sons.

Where, therefore, in a suit for a declaration to the effect that the plaintiff's ancestral *haveli* was not liable to attachment and sale in satisfaction of a money decree against his father, it appeared that the decree was not based upon any immoral debt.

Held, that the plaintiff had no right to set up his interests in the ancestral house as a bar to the remedy claimed by the creditor. I. L. R. 39 All. 437 ; 21 C. W. N. 698 ; 1 P. L. W. 557 ; 15 A. L. J. 437 ; 19 Bom. L. R. 498 ; 26 C. L. J. 1 ; 36 M. L. J. 14 ; (1917) M. W. N. 439 ; 22 M L. T. 22 ; 6 L. W. 213 ; 44 I. A. 126 ;

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39 Ind. Cas. 280; (P. C.), *distinguished.* (Shadi Lal and Le Rossignol, JJ.)

Amar Nath *v.* Rustomji.—15 P. R. 1918; 112 P. L. R. 1918; 24 P. W. R. 1918; 43 I. C. 678.

——*Joint family—Father—Necessity—Saving arrest.*

Held, that:—A mortgage by a land owner of a portion of his ancestral land in order to rescue one of his sons from being imprisoned in execution of a decree against him (son) is valid and binding upon his other sons. A suit for possession of ancestral immoveable property by an alienee against the heirs of alienor can be resisted by them on the ground that there was no consideration or necessity. (Reid, C. J. and Johnstone, J.)

Jai Mal *v.* Lal Singh.—88 P.W.R. 1911; 11 I.C. 408.

——*Joint family—Father—Right to receive rent—Dispute between father and sons—Effect.*

Held, that, where a lease of immoveable property has been executed in favour of a Hindu father living jointly with his sons, the tenant is bound to pay the rent to the father and is not concerned with any dispute between the father and sons *inter se* and even if sons have been joined as nominal defendants in the rent suit, the matter should be treated between the father and the tenant alone. Civil Revision No 1571 of 1910 decided on 27th November 1911, *followed.* (Kensington, J.)

Narpat Rai *v.* Nausharia Mal.—15 P.L.R. 1912 (Sup.); 17 P.W.R. 1913; 18 I.C. 592.

—— *Joint family—Father—Sale by father of waste land.*

Held, that a *bona fide* sale of waste land of little use by a Jat, some 20 miles away from his village, where he owns his culturable land, apparently for family expenses, indicating no extravagance, imprudence or reckless waste, on behalf of the vendor, is binding on his sons, and they cannot contest its validity on the ground of there being no proof of actual necessity. (Kensington, J.)

Khanu *v.* Fateh Khan.—87 P. L. R. 1912; 5 P. W. R. 1912. 13 I. C. 861.

—— *Joint family—Khatris of Amritsar—Whether a son can enforce partition of ancestral property during his father's life time—Burden of proof.*

Under the Mitakshara Law a son can enforce a partition even during his father's life time, 5 C. 148 : 31 C. 111, *referred to.* The initial presumption no doubt is that non-agricultural high caste Hindus follow their personal law. *Held*, however that as the strict rules of Hindu Law are not in force in the principle caste the onus of proving that among Khatris of amritsar the son has such a right

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was rightly laid on the son. (Scott Smith, Leslie Jones and Broadway, JJ.)

Hari Kishen *v.* Chandu Lal.—105 P. R. 1917 (F.B.); 43 I.C. 667.

——*Joint family—Mahant—Right to share in family estate.*

Where a person succeeds to the *gaddi* of a shrine and is appointed *mahant* of the shrine, and it does not appear that he has renounced the world by becoming a *sanyasi*, his right to a share in his family estate is not lost. (Shah Din and Chevis, JJ.)

Lok Nath *v.* Amar Nath.—24 P.L.R. 1911; 129 P.W.R. 1911; 9 I.C. 541.

——*Joint family—Decree against family property—Liability of individual members.*

Where there is a decree against the joint family property including the separate property of a certain member of the joint family, it follows that when that member quits the family all of his property that remains liable for the satisfaction of the decree is (1) his share in the joint family (2) his separate property such as it was up to the date when he quitted the family. Separate property acquired after he quitted the family is not, and never could have been joint family property. (Le Rossignol and Campbell, JJ.)

Gokul Chand *v.* Firm of Hukam Chand —3 Lah. 14; 65 I.C. 731; (1922) Lah. 84.

——*Joint family—Manager—Decree against—When binding on other members.*

A decree passed against the manager of a joint family as representing the family, provided it be in respect of a debt contracted by him for family necessities or for the family business may be executed against the whole co-parcenary property. 36 A. 383 (P. C.), *relied on.* But it must be shown that the manager was sued in a representative capacity. (Abdul Raoof and Harrison, JJ.)

Mela Mall *v.* Gori.—3 Lah. 288; (1922) Lah. 200; 66 I.C. 485.

——*Joint family—Manager—Partition by will—Power to effect.*

Held, that a Hindu proprietor or the manager of a joint Hindu family cannot make by Will any equal or unequal distribution of his ancestral property. 2 Mad. 317; 5 Ind. Jur. 352; I Ind. Dec. (N. S.) 491, *distinguished.* (Le Rossignol and Wilberforce, JJ.)

Nand Lal *v.* Diwan Chand.—86 P.R. 1918; 76 P.L.R. 1918; 78 P.W.R. 1918; 45 I.C. 162.

——*Joint family—Manager—Position of members towards each other —Trustee and* cestui que trust.

Where a Hindu father living with his two sons as a member of a joint family purchased a shop in their names and one of them sued the other for accumulated rent of the shop, and the father when examined did not admit the transaction to be a benami one

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but stated that he had intentionally put the property in the names of his two sons and did not claim it. *Held*, that the claim was valid and it was not necessary for plaintiff to sue for partition of the joint family property. The defendants had assumed the office of a trustee or banker for his brother and joint tenant, and as such, he could be called on to make good the amount held by him for the beneficiary or *cestui que trust*. 65 P. R. 1884 and 26 Mad. 544, *referred to*. (Anderson, J.)

Ram Rattan *v.* Puran Chand.—24 P.R. 1904.

——*Joint family—Manager—Power of—Creditor lending money to manager—Duty of.*

In a suit by the plaintiff filed by him on attaining majority against his uncle, who was his guardian and manager of the joint property of the family and a mortgagee from the manager of such property—

Held, that in decreeing partition the plaintiff's share of the property could not be burdened with that portion of the mortgage-money for which there was no legal necessity shown to have existed, nor with any previous debts of the mortgage included in the mortgage which were to the knowledge of the mortgagee extravagant and out of all proportion to the income and resources of the family, though incurred on an occasion which necessitated incurring of debt, i. e., *chaubarkhu* of the plaintiff's father. (Robertson and Rattigan, JJ.)

Hari Chand *v.* Govardhan Chand.—194 P.L.R. 1905.

——*Joint family—Manager—Power of.*

A Manager of a Joint Hindu family can mortgage the estates of all the members of the family for real family purposes, unless it can be shown that the expenditure has been unreasonably large and marked by gross carelessness. (Robertson and Rattigan, JJ.)

Hari Chand *v.* Mansa Ram.—18 P.L.R. 1906.

——*Joint family—Manager—Powers of.*

The manager can represent the co-parcenary in all suits affecting its interests, can make contracts, refer to arbitration and compromise any claim and can do all acts which he thinks necessary or beneficial to the estate. (Scott Smith, J.)

Mitha Mal *v.* Shiv Ram.—60 I.C. 484.

——*Joint family—Manager—Right of management.*

The father as *Karta* is entitled to the management of the whole property including the interests of minor co-parceners. On his death the management passes to the eldest son as *Karta*. Where all the sons are minors the Court can appoint a guardian of the whole property but this appointment lasts only until the eldest attains majority, after which it comes to an end and the Court is bound to hand over the property to him (Broadway and Abdul Raoof, JJ.)

Gobind Sahai *v.* Balkaur.—63 I.C. 559.

HINDU LAW—JOINT FAMILY—NECESSITY.

——*Joint family—Necessity—Father—Alienation of ancestral house by father—Questioned by son—Onus of proving necessity on the vendee.*

Held, that where a Hindu son attacks the sale of ancestral house by his father it lies on the former to establish immorality of the transaction by specific facts if he is to succeed in freeing himself from the liability to pay his father's debt, and that the sale cannot be maintained as a sale unless the vendee proves, necessity. 53 P. R. 1901; I. L R 31 All. 176, *referred to.*

But it would be unfair to except precise proof on the point some 20 years after the alienation. (Shadi Lal and Le-Rossignol, JJ.)

Ram Labhaya *v.* Gopal Das—151 P.L.R. 1915; 78 P.W.R. 1915; 29 I.C. 891

——*Joint family—Necessity—Strict proof—Lapse of time.*

Strict proof of legal necessity for an alienation should not be instituted upon after a lapse of many years. (Shadi Lal and Broadway, JJ.)

Tara Chand *v.* Kashi Ram.—17 P.R. 1917; 9 P.W R 1917; 71 P.L.R 1917; 39 I.C. 121.

——JOINT FAMILY—PRESUMPTION.

——*Joint family—Presumption—Jointness—Onus of proof that family is joint—Family shown to have been joint once—Presumption—Joint family with a nucleus—Acquisition by a member of family—Nature—Proof—Onus—Presumption.*

When the parties concerned once formed a joint hindu family the presumption of law is that the family continued joint unless it is shown to have become divided.

Where a family is joint and there is a *nucleus* from which property may be acquired, the presumption is that property acquired by any member is joint property and the onus lies on those who allege that it is self-acquired.

The mere fact that any particular acquisition is in the name of one or more of the members does not warrant the assumption that it is the exclusive acquisition of the person or persons named and not of the whole of the joint family. (Scott Smith and Broadway, JJ.)

Nanak Chand *v.* Lachman Das—82 P.R. 1917; 97 P.W.R. 1917; 40 I.C. 775.

——*Joint family—Presumption of jointness*—Onus.

According to Hindu Law, the presumption is that every Hindu family is joint, but admissions of the following description by a Hindu denying separation are quite inconsistent with the theory that the family was joint at the time the admissions were made. (Reid, C.J. and Beadon, J.)

Mst. Rukhman *v.* Kirpa Devi—338 P.L.R. 1913; 299 P.W.R. 1913; 22 I.C. 134.

——*Joint family—Presumption of jointness.*

The presumption in the case of Hindu families is in favour of jointness. Where a guardian was appointed for three minors who

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constituted a joint family, and after each one attained majority his share was given to him and during their minority as well as afterwards the accounts of the income were kept separate in the name of each minor and after all the brothers attained majority the income was divided among them and one of them admitted that he had no concern in the property of another brother *held*, that the presumption of jointness was rebutted. (Broadway and Abdul Raoof, JJ.)

Gobind Sahai *v.* Bal Kaur.—63 I.C. 559.

——*Joint family—Presumption of jointness—Power of a member of the family as a partner to strike balance of account.*

In a suit for money on book accounts against a Hindu and his four sons on the allegation that they are members of a joint Hindu family and kept a shop managed by one of the sons. *Held*, that there is presumption that the normal state of every Hindu family is joint. The degree of weight to be attached to this presumption must depend more or less on the circumstances of each case. 102 P.R. 1889 & 13 P. R. 1883, *referred to*. (Walker and Maude, JJ.)

Bechha Lal *v.* Jai Persbad.—18 P.L.R. 1900.

——*Joint family—Presumption of jointness—Ancestral house not divided.*

Held, that, where it is shown that for many years past the brothers have nothing in common except their ancestral house in which they have lived separately and have remained separate in food, income, expenditure and worship the ordinary presumption of Hindu Law of every family being joint falls to the ground and the rule of survivorship does not apply in such a case and the will by one brother of his share of the joint property in favour of his distant collateral is not invalid. 3 I. C. 234, *followed*. (Shah Din and Chevis, JJ.)

Sham Lal *v.* Chhajju Mal.—31 P.W.R. 1913; 76 P.L.R. 1913; 19 I.C. 51.

——*Joint family—Presumption—Jointness.*

The initial presumption is that a family is joint though members deal with certain paternal properties as their own.

Rama Lal *v.* Hari Charan Lal.—297 P.L.R. 1913; 152 P.W.R. 1913; 20 I. C. 562.

——JOINT FAMILY—PROPERTY.

—— *Joint family—Property—Acquisition—Property acquired in the name of one of the members of a joint Hindu family.*

Held, that, where the first Court has neither put in issue a plea of a defendant nor has given any finding thereon and the defendant has failed to raise it again in the grounds of his appeal such a plea as well as the point not urged before the first Court cannot be allowed to be advanced in argument to attack the judgment under appeal. (Shah Din and Scott Smith, JJ.)

Nathu Mal *v.* Mul Chand.—183 P.W.R. 1912; 197 P.L.R. 1912; 17 I.C. 232.

—— *Joint family—Property—Acquisitions in names of individual members—Presumption.*

Held, that the normal state of every Hindu Family is joint. The mere fact that any particular acquisition is in the name of one

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or more of the brothers does not warrant the assumption that it is the exclusive acquisition of the person or persons named and not of the whole of the joint family.

The presumption arising from a partition of a portion of the family property that the whole was divided is not a strong one particularly when there is no evidence as to what property was actually divided. I. L. R 33 All. 677, *referred to.* (Shah Din and Scott Smith, JJ.)

Sham Das *v.* Pokhlo Ram.—16 P.L.R. 1912 (Sup.); 18 P.W.R. 1913; 18 I.C. 604.

——Joint family—Property—Acquisition by member of—Property in name of member of—Ownership—Presumption. *See* Hindu Law, Joint family—Presumption.

82 P.R. 1917.

——*Joint family—Property—Acquisition in the name of one member—Burden of proof—Shifting of burden—Statement of person as to his rights in property—Not to be lightly set aside.*

In case of purchase by the head of a joint Hindu family in the name of some other member of the family, the *onus* of proving that the purchase was not purely *benami* lies upon the person making that assertion. 6 M. I. A. 53, *followed.*

But, in a particular case, other considerations may come in, which would shift the burden of proof in regard to the nature of the *benami* transaction. Thus, where the transaction is shown to be of the nature of a distribution of property amongst various members of the family, or for the advancement in life one of them, the initial presumption may cease to exist. 13 M. I. A. 395, *referred to.*

The statements of a person, who is in the best position of all to know about his property, cannot be lightly set aside, on the mere ground that they were made with a fraudulent purpose, and if the heir or representative of such a person alleges these statements to be incorrect, the burden of proving them to be so lies very heavily upon him. It is not desirable to encourage the idea that false statements may be lightly made at one time, for the advantage of the person making them, and then lightly repudiated when they appear to be to his advantage or to the disadvantage of his successor's title. (Reid, C.J. and Robertson, J.)

Raja Ram *v.* Mahta Fatteh Chand.—187 P.L.R. 1912; 248 P.W.R. 1912; 17 I.C. 216.

——*Joint family—Property—Acquisition by member—Presumption—Plea of self-acquisition—Onus of proof—Acquisition in name of particular member.*

The legal presumption is that all the properties held by any member of a joint family so long as the family is joint are joint properties and joint acquisitions, made by the several members in a joint family, while the family is joint, are presumed to have been made from joint funds and belong to the joint family.

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The onus lies on the party who asserts self-acquisition.

The mere fact that any particular acquisition is in the name of a member of the joint family, does not warrant the assumption that it is the exclusive acquisition of the member named and not of the whole joint family. (Broadway, J.)

Gopal Shah *v.* Jawand Singh.—30 P.W.R 1919; 49 I.C. 1007.

Joint Hindu family—Self-acquisition.

When a member of a joint Hindu family makes acquisitions of property by his separate exertions, any other member of the family claiming to have a share in those acquisitions must show as a matter of fact and by clear evidence that in some way he was associated in the business with the member who made the acquisitions and became by taking part in the business or otherwise, a partner. In such a case the presumption of Hindu Law that the business was the property of the whole family because the family was a joint one, must be held as rebutted. (Johnstone and Rattigan, JJ.)

Rijhu Ram *v.* Mohan Lal.—25 P.R. 1906; 81 P.L.R. 1906; 58 P.W.R. 1906;

——*Joint family—Property—Ancestral property—Right by birth—Punjab—Custom.*

Held, that the family, though Arora by caste, follow agricultural custom as regards their ancestral land, and as such, as also under their personal law as applicable to the Punjab, plaintiffs, have no right to take a share therein in their father's life-time. (Shah Din and Beadon, JJ.)

Tulsi Ram *v.* Shib Das.—5 P.R. 1913; 228 P.L.R. 1913; 19 I.C. 11.

——*Joint family—Property—Devise of ancestral property.*

A will by a member of a joint Hindu family bequeathing joint as well as his self-acquired property is invalid *qua* the joint property though it will be valid *qua* his separate property. (Shadi Lal, C.J. and Le Rossignol, J.)

Parmanand *v.* Shev Charan Das.—2 Lah. 69; 21 P.L.R. 1921; 15 P.W.R. 1921; 3 Lah. L. J. 82; 59 I.C. 256.

——*Joint family property—Property given to a widow for maintenance continues to be joint family property.*

Held, that when among Hindus (Aroras of Multan) governed by Mitakshra Hindu Law the widow of a predeceased son received the share of her husband in the joint family landed or other immoveable property she does so obviously for the purpose of maintenance only, and consequently she is incompetent to alienate it even for necessity. (Rattigan and Leslie Jones, JJ.)

Chandan Mal *v Mst.* Wasindi—92 P.R. 1915; 168 P.W.R. 1915; 31 I.C 541.

——Joint family—Property—Joint property—Nucleus—Presumption of joint acquisition *See* Hindu Law—Joint family—Presumption.

82 P.R. 1917; 97 P.W.R. 1917; 40 I.C. 775.

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——*Joint family—property—presumption of jointness.*

Held, that the initial presumption is that property of every Hindu family is joint and this presumption cannot be rebutted by showing that : (1) Father of plaintiff and defendants mentioned in his will that they were separate, particularly when the will was afterwards declared inoperative by a competent Court (2) one of the brothers dealt with certain paternal property as his own and (3) by showing the brothers were living separate from each other. (Robertson, J.)

Ramu Mal *v.* Harcharan Das—152 P.W.R. 1913 ; 297 P.L.R. 1913 ; 20 I.C. 562.

——*Joint family—Property—Presumption.*

Where the members of a Hindu family have always lived in a town and have taken no agricultural pursuit the mere fact of their having invested money in land does not make it probable that they have altered their mode of life by adopting agricultural customs, and very clear and convincing evidence is necessary to establish a rule of succession opposed to their personal Law. (Reid, C. J.)

Mussamat Rukman *v. Mst.* Kirpa Devi.—338 P.L.R. 1913; 209 P.W.R. 1913 ; 22 I.C. 134.

——*Joint family—Ancestral property—Will by propositus—Division ignoring Will.*

Property derived from an ancestor but which is divided and enjoyed by members neither according to Hindu Law, custom nor according to the terms of a Will left by the ancestor is ancestral joint family property in which the son takes an interest by birth. (Johnstone and Rattigan, JJ.)

Diwan Shib Nath *v.* The Alliance Bank of Simla—215 P.L.R. 1914 ; 110 P.W.R. 1914 ; 3 P. R. 1915 ; 25 I.C. 480.

——*Joint family—Property—Self-acquisition—Property purchased out of the income of father's estate is self-acquired property.*

Where property is purchased from out of the income of ancestral property or with one's own earnings is self-acquired property. (Kensington and Johnstone, JJ.).

Karm Baksh *v.* Chiragh Din—66 P.R. 1911 ; 104 P.L.R. 1912 ; 190 P.W.R. 1911 ; 12 I.C. 862.

——*Joint family—Property—Self-acquisition—Jagir grant of reserved forest.*

Held, that:—Where a *Rakh* (reserved forest) was granted by the Government to a *Jagirdar* and it was afterwards decided that it should be entered in the Revenue papers as owned by him in proprietary rights to the exclusion of either the proprietors of the adjoining villages or of the Government, such a *Rakh* becomes the self-acquired property of the *Jagirdar* and cannot be treated as ancestral appertaining to the *Jagir*.

A will of such property by the *Jagirdar* in favour of his wife with full power of alienation and a sale by her on his death, even

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without necessity, is valid and cannot be questioned either by the successor to the *Jagir* or the other reversioner.

Obiter :—In the Punjab the term *Jagir* is ordinarily restricted as meaning an assignment of land revenue only. *Jagir* is ordinarily not land. (Kensington and Rattigan, JJ.)

Maya Das *v.* Sardar Gurdit Singh—167 P.L.R. 1912 ; 146 P.W.R. 1912 ; 16 I.C. 855.

——*Joint family—Property—Self-acquisition—Nucleus of ancestral property—Education out of family funds—Gains of learning per Rattigan and Le Rossignol, JJ.*

Per *Rattigan and Le Rossignol, JJ. (Shah Din, J dissenting)* —A member of a joint Hindu family which admittedly possesses joint property must be presumed in the ordinary course of things to have received his education, whether special or ordinary, at the expense of his family and his family property and the burden of proving the contrary would rest upon him.

Per *Le Rossignol and Shah Din, JJ.* Property acquired by a member of a joint hindu family to the detriment of the family and as the result of a special education or training received with the help of joint property is liable for a debt contracted by the manager in the course of a joint family business.

Where a member of a joint Hindu family has received a special education or training. The presumption is that it was acquired with the assistance of the family funds. The presumption may, however, be rebutted by any person as asserting the contrary. 7 M. H. C. R. 47, 50, *referred to.*

Per *Shah Din, J.* There is no initial presumption that a special education or training received by a member of a joint family was to the detriment of the family estate and the onus is on the creditor, seeking to make the separate or acquired properties of such member liable for a family debt to prove that the acquisition was made with the assistance of the joint funds. 7 M. H. C. R. 47; 51, *not approved.* 59 P. R. 1893, *explained.* 1 M. 252, *referred to.* (Rattigan, Shah Din and Le Rossignol, JJ.)

Gokal Chand *v.* Hukam Chand Nathu Mal.—70 and 71 P.R. 1917; 154 P.L.R. 1916; 109 P.W.R. 1916; 34 I.C. 714 (F. B.)

——*Joint family—Property—Self-acquisition—Proof of—Property devised, the self-acquisition of the devisee.*

In a case of a joint Hindu family formed only of a father and his minor son, the initial presumption of jointness of the property is rebutted by proof of the fact that the father's property is all self-acquired.

Property devised by will over which the testator had complete powers of disposal is self-acquired property in the hands of the devisee. (Shadi Lal and Le Rossignol, JJ.)

Amar Nath *v.* Guran Ditta Mal.—14 P.R. 1913; 16 P.W.R. 1918; 43 I.C. 117.

HINDU LAW—JOINT FAMILY—RE-UNION.

——*Joint family—Re-union—Question of law.*

The question of the re-union of a Hindu family and the facts relevant to prove such a re-union are matters of law. (Wilberforce, J.)

Narain Das *v.* Mahuga Ram.—45 P.W.R 1921; 59 I.C. 706.

——*Joint family—Suit against manager—Appeal—His death and bringing on record of his major son but not his infant grandsons by pre-deceased son—Effect.*

In an appeal against *B*, forming a joint Hindu family with his two sons *B* died. His elder son was brought on the record, the younger died before the application for substitution was made leaving an infant son, who was not brought on the record : *Held*, that the appeal had not abated. (Reid, C. J. and Robertson, J.)

Khuda Bakhsh *v.* Narain Das.—81 P.W.R. 1913; 51 P.L.R. 1913; 18 I.C. 44.

——*Joint family—Suit—Bond in name of member of—Suit upon—Parties—Other members if necessary parties—Bond for family debt—effect.*

Held, that where a loan is given out of the joint Hindu family funds and the bond for the amount is given only in the name of one of the members, that member being the sole obligee can sue alone and other members of the family are not necessary parties. 127 P. R. 1906; 10 P. W. R. 1907; 58 P. L R. 1907; I. L R. 22 Mad. 326; I. L. R. 20 Bom. 435; I. L. R. 32 All. 183, *followed*. I. L. R 18 Mad. 33; I. L. R. 33 All. 272 (P. C.) ; 69 P. R 1906; 106 P. W. R. 1906; 118 P. L. R 1906, *distinguished*. I. L. R. 32 Mad 184, *not approved*. (Scott Smith and Broadway, JJ.)

Sher Muhammad *v.* Ram Chand.—87 P R 1917; 8 P.L.R. 1918; 170 P.W R. 1917; 42 I.C. 377.

——*Joint family—Suit—Parties—Decree in suit—Widow brought in wrongly as representative of deceased co-parcener.*

A, B and C who were members of a joint Hindu family sued for the recovery of a certain debt due to them jointly. During the pendency of the suit C died. His widow D obtained a succession certificate in respect of his estate and was brought upon the record of this suit as his representative. A and B appealed against the order substituting D's name for her husband but the appeal was dismissed in default. Subsequently, there was separate protracted litigation between D on the one hand and A and B on the other, with regard to D's claim to succeed to C's share in the family property. It was finally held in that suit that D's claim to succeed to C's share was time-barred. A and B thereupon applied for removal of D's name, as representative of C, from the record. The Court simply filed this application. But when the Court passed the decree in the suit, it directed that the decree was only in favour of A and B and not in favour of D.

Held, that until D's name was duly struck out, the decree should have been in favour of D, also C's representative. The fact that D. may have no enforceable right against the other plaintiffs to share in the decree could not affect her right as representative of C

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to be recognised for the purposes of this suit as a joint decree-holder in such capacity. All the co-plaintiffs were entitled to a joint decree, leaving it open to them to adjust their respective claims subsequently. (Johnstone and Rattigan, JJ.)

Nihal Devi *v.* Kishore Chand.—51 P.R. 1912; 139 P.W.R. 1912; 13 I.C. 564.

——*Joint family—Suit—Parties—Payment to other than obligees in bond.*

S and the sons of one H, members of a joint family, along with two others, sued the defendant for the recovery of a sum of Rs. 17,000 with interest due on a bond executed in favour of S and H. The defendant pleaded that, the amount being legally due to all the members of the family, he was willing to pay to those whom the Court finds entitled to receive the amount, and that he paid other members Rs. 10,400 on account. The Lower Court held that the other members of the family were not necessary parties and payments made to them need not be accounted for by the plaintiffs. Defendant appealed to the Chief Court and affixed a Court-fee stamp of Rs. 10 only.

Held, that, so far as the question as to who are entitled to receive the money sued for is concerned, the memo. of appeal was properly stamped with a Court-fee of Rs. 10 (Art. 17 (6)), Sch. II, Court-Fees Act and that, as regards the sum of Rs. 10,400 said to have been paid on account to the other members, *ad valorem* duty must be paid.

If a contract is made on behalf of a joint Hindu family by the managing member, no other member of the family is competent to interfere in that contract or to give receipts in connection therewith. 15 C. W. N. 321 (P. C.), *referred to.*

But where the contracting party had no reason to believe that the contract was other than a contract with all of the four joint brothers, he was fully justified (until notified otherwise) in making payments to any one of those four brothers on behalf of the family. (Rattigan and Shah Din, JJ.)

Sirdar Kirpal Singh *v.* Sant Singh.—71 P.R. 1911; 30 P.L.R. 1912; 295 P.W.R. 1912; 13 I.C. 305.

—*Joint family—Trade—Ancestral business—Liability of minor members.*

The two brothers *R* and *L* who was minor, sons of *J* carried on an ancestral business. The plaintiffs sued *R* and *L* for money due by the defendants' firm Jiwan Shah Rattan Chand. It was contended that *L* was not liable on the ground that *R* was the sole proprietor of the firm and that assuming *L* was also a member of the firm the property of the firm was liable but share of *L* in the joint family property was not liable. *Held*, that the presumption was that the two brothers were both partners in the firm which was carried on by the adult brother *R* and also, that in such cases the presumption is that they are members of a Joint Hindu family.

Held, further, that there was nothing in the circumstances of the case to draw a distinction between the assets of the firm and the other property of the family so far as the liability of the minor defendant was concerned. 59 P.R. 1893; I. L. R. Cal. 470, *followed.*

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26 Cal. 349; 4 B. L. R. 968; I. L. R. 27 Bom 157; I. L. R. 3 Cal. 738; I. L. R. 26 Bom. 206; 3 B. L. R. 738, *referred to.*

The case was remanded on the question whether *L* was not a member of the firm. (Rattigan and Chevis, JJ.)

Wadhawa Shah *v.* Rattan Chand.—189 P.L.R. 1915; 126 P.W.R. 1915; 30 I.C. 813.

——*Joint family—Trade—Business carried on by individual members—If ancestral—Debt—Liability.*

Held, that where a joint Hindu family consisting of father and sons carried on in the beginning no business other than agriculture and two of the sons moved from their ancestral village to another place where they started a shop in their individual names and there was no indication that the other members of the family had any hand in it the lattar are not liable to pay the price of the goods supplied to that shop. 162 P. R. 1888, *referred to.* 45 P. R. 1899, *distinguished.* (Robertson and Beadon, JJ.)

Suraj Kumar *v.* Baldeo Das.—48 P.R. 1913; 23 P.W.R. 1913; 60 P.L.R. 1913; 18 I.C. 701.

——*Joint family—Trade—Firm—Contract with managing members—Joint family trade—Right of managing members to sue alone on contract—Parties—Other members of firm not necessary parties to suit.*

In a suit upon a contract entered into with a Hindu trading family, it is not necessary for all the partners in the trade business to join in a suit. It is sufficient if the managing members, with whom contract was made, sue to recover damages or compensation for breach of such contract. 15 C.W.N. 321 (P C), *followed.*

A suit instituted by the managing members of a Hindu trading family is maintainable, despite non-joinder of another member of the firm who, though interested in the result of the suit, had no part in the management of the business, and was not one of the partners with whom the contract was made. The mere fact that such a member of the firm was brought on record after the expiry of the period of limitation cannot affect the right of the managing members to recover on the suit already instituted by them. (Rattigan and Chevis, JJ.)

Badri Das *v* Santa Singh.—3 P.R. 1912; 57 P.L.R. 1912; 44 P.W.R. 1912; 13 I.C. 873.

——*Joint family—Trade liability—Dealings of members* inter se—*Liability of joint family property—Partition of joint family property—Mortgage of one party's share—Liability of property for debts due in respect of partnership.*

Tek Chand and Pala Mal were co-parceners and the former sued the latter in 1898 for partition of the joint family property and for accounts and dissolution of partnership and obtained a decree declaring that he was entitled to partition and that all houses in suit were the property of the joint family and liable to partition. In continuation of the proceedings the District Judge in 1907 ordered

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the Receiver appointed in the suit to proceed to divide the immoveable property without deducting anything for debts due by either party. In February 1908 Tek Chand executed a mortgage deed in favour of the present defendant of his share. The Receiver's scheme for partition was sanctioned by the Court on 1st November 1910. It was subsequently ascertained by the final decree in August 1914 that the total amount due from Tek Chand to Pala Mal and others on account of the partnership was Rs..... An attachment of the mortgaged property took place in 1911 and Pala Mal and others applied for sale of the attached houses. The mortgagee objected to the sale and the objection having been allowed, the decree-holders Pala Mal and others brought the present suit for a declaration that they had a lien on the property and had a preferential right to that of the mortgagee ;

Held, that the Joint family immoveable property had no connection whatever with the partnership business and was in no way liable for any debts due on the partnership business and that, therefore, the plaintiff had no lien on the houses in suit. (Scott Smith and Wilberforce, JJ.)

Mst. Raj Dulari v. Pala Mal.—44 P.W.R. 1919; 50 I.C. 132.

——Joint family—Trade liability—Hundi by one defendant—Other defendants sought to be made liable on a partnership—Evidence that the defendants are members of a joint family and are liable on that basis ought not to be allowed to be let in. *See* Pleadings.

94 P.L.R. 1914; 63 P.W.R. 1914; 22 I.C. 716.

—— *Joint family—Will by Hindu father if can affect son's interest—Widow, gift by, when valid.*

Directly a son is born to a Hindu in possession of an ancestral house, he becomes a co-parcener in the house, and the father cannot make a Will declaring who is to succeed to the property after son's death without the consent of the latter.

A Hindu widow has merely a life-interest in the property left by her husband and, therefore, cannot make a valid gift of it without the consent of her reversioner (Rattigan and Scott Smith. JJ.)

Diwan Chand v. Jivan Mal.—222 P.W.R. 1915; 135 P.L.R. 1915; 26 I.C. 910.

—— MAINTENANCE.

—— *Maintenance—Step-mother, rights of, against step-son when there is son—Partition between son and step-son—Mitakshara and Dayabhaga.*

Held, that under Hindu Law, both Dayabhaga and Mitakshara a step-son is not bound to contribute to the maintenance of his step-mother after a partition of the joint property has been effected between him and his step-brother (the son of his step-mother). I.L.R. 16 Cal. 758 (P.C.), *followed*.

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The status of a step-mother discussed. 1 P.C.L.J. 142; I.L.R. 8 Cal. 437 at p 542, 543; 37 Cal. 214; 5 Mad. 29 and 32; 8 Mad. 107 (F. B) at p. 129; 40 Bom 188; 11 Bom. at p. 614; 1 P. 67 (F.B.); 16 All. 221 at p. 224; 153 P. R. 1889, *referred to.* (Rattigan and Beadon, JJ.)

Bishen Das *v.* Mansa Devi 60 P.L.R. 1914; 47 P.R. 1914; 23 I C. 536.

——*Maintenance—Widow—Unchastity effect of—Agreement by reversioner to maintain—Subsequent reformation—Effect.*

Where the reversioner of a widow's husband agree to maintain her only on the condition of her remaining chaste, (and the words "*Jab tak Khawind ke haq main bethi reshi*" clearly convey this meaning) she is not entitled to claim maintenance under the agreement so long as she is leading unchaste life. The general principle of Hindu Law also is to the same effect. I. L. R. 15 All. 382; I. L. R. 9 Bom. 108; I. L. R. 17 Cal. 67; I. L. R. 17 Mad. 392, *referred to.* All. W. N. 1903, p 226, *distinguished.* (Scott Smith, J.)

Tika Ram *v. Mst.* Wasandi Bai.—19 P.W.R. 1911; 9 I C. 926.

——Maintenance—Widow—Right to reside, denied in execution—Subsequent suit on same subject matter—Bar. *See* Resjudicata, execution.

17 P.W.R. 1915; 26 I.C. 430.

——*Maintenance—Widow—Rights of—Charge on husband's estate*—Bona fide *purchaser for value.*

The right of a Hindu widow to a charge on her husband's estate in respect of her maintenance may be lost by a transfer made for legal necessity or for a purpose binding upon the family. In that case the question of notice to the purchaser is immaterial. Even a transferee who takes with a notice of the claim would hold it free from it. Where the property is limited the transfere is bound to enquire whether there is any claim for maintenance or residence, and his failure to do so would be notice of the claim. 2 B. 494, *relied on.* (Abdul Raoof, and Martineau, JJ.)

Bhagat Ram *v. Mst.* Sahib Devi.—3 Lah 55; (1922) Lah. 273; 67 I.C. 848.

——*Maintenance—Widow—Right of residence in a particular house of her husband.*

Held, that a widow's suit against the creditor of her husband who has attached a house belonging to him in execution of a decree claiming her right to reside in the house is not maintainable according to Hindu Law when she is unable to prove that the house attaced is the only house belonging to her late husband which is suitable for her as a place of residence and that none of the other dowelling houses belonging to his estate would meet her requirements. (Rattigan, and Williams. JJ.)

Mst. Raji Bai *v.* Jesa Ram.—102 P.R. 1910; 44 P.L.R. 1911; 8 I.C. 1157.

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——*Maintenance—Widow—Resjudicata.*

An adjudication refusing an application for permission to sue *in forma pauperis* cannot be treated directly or indirectly, as an adjudication of any of the matters in dispute between the parties in a suit subsequently filed by the plaintiff, as the finding is a summary one and not subject to appeal.

The fact that the widow has got some jewels does not debar her from claiming maintenance, nor does the fact that she has small means of her own, though the latter may have some bearing on the question—What maintenance should be allowed to her?

It is no valid defence to a claim for maintenance that she holds property belonging to her husband, to which the defendant is rightfully entitled. Such property may be recovered from her, but its possession is not subversive of her right. If she gets wrongful possession of the whole property, or a very large portion of it, a Court of equity might hold its hand and decline to help her until she restores such property to the defendant, whose liability primarily arises out of possession of the estate. (Chatterji, J.)

Mst. Sukh Devi *v.* Sarb Dial.—129 P.L.R. 1902.

——*Maintenance—Widows right of residence in ancestral family house against creditor's right to sell it to recover family debts.*

Held, that a Hindu widow or wife is not entitled to claim residence in the family dwelling house against the creditor's right to proceed against it in execution of a decree obtained by him to recover just family debts. (Johnstone and Shah Din JJ.)

Nehal Devi *v.* Shib Dial.—36 P.R. 1907; 11 P.L.R. 1908; 118 P.W.R. 1907.

——*Maintenance—Widow of grandson—Justice, equity and good conscience—right to be maintained by husband's grand father—If remains unmarried and in the family dwelling house.*

Held, that, the widow of a grandson is entitled to be maintained by her husband's grandfather so long as she remains unmarried and lives in the house where she lived with her deceased husband. 93 P. R. 1891; 115 P. R 1893; 50 P. R. 1897, *referred to*. *Held*, also, that where the net income of her husbands grandfather be Rs. 360 a year as in this case, a maintenance at the rate of Rs. 15 a month for her and her minor daughter is too high but the sum of Rs. 8 per mensem (Rs. 5 for the widow and 3 for her minor daughter allowable. *Held*, further, that a point neither pressed before the lower Appellate Court nor raised in appeal before the Chief Court cannot be urged in argument although it was put in issue before the 1st Court, (Shah Din, and Scott Smith, JJ.)

Ladha *v. Mussammat* Karimbibi.—269 P.L.R. 1913; 168 P.W.R. 2913; 20 I.C. 287.

——*Maintenance—Widow of deceased co-parcener—Existence of ancestral property.*

The plaintiff sued her father-in-law for maintenance for herself and her minor son. It was found as a fact that defendant and his

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deceased son (plaintiff's late husband) were co-parceners in a joint Hindu family, that there had been considerable ancestral property in the hands of defendant (whatever might have become of it) and that the deceased, were he alive, would have been entitled until partition to live with the defendant and enjoy the family income with him. *Held*, that under these circumstances the plaintiff was under Hindu Law entitled to maintenance. (Johnstone and Rattigan, J.J.)

Budhan *v.* Radha Kishen.—108 P.R. 1915; 188 P.W.R. 1915: 32 I.C. 33.

——*Maintenance—Widow—Agreement to lead chaste life—If not, forfeiture of maintenance—Second appeal—S. 41, of act III of 1884.*

Held, that where a Hindu widow executed an agreement in favour of her husband's reversioner to the effect that she would lead a chaste life throughout the period of her residence in her deceased husband's house and receive maintenance allowance so long as she remained chaste, has taken to a life of immorality, she forfeits the right to maintenance if she breaks the contract.

Held, also, that the finding that the woman has taken to a life of immorality cannot be interfered with in second appeal. (Shah Din, J.)

Mst. Tara Devi *v.* Dhanpat Rai.—150 P.W.R. 1915; 31 I.C. 797.

——*Maintenance—Widow—Arrears—Delay in suing-whether demand necessary.*

Held, that it is a principle, generally applicable, that a Hindu widow is entitled to claim arrears of maintenance at a reasonable rate, regard being had to the status of her deceased husband and to the value of the property left by him, and that it is not necessary for her to prove before coming into Court that she made a demand for such arrears and that the demand was refused. 21 A. 283; 36 B. 383 (386) 43 B. 66; 9 I.C. 614; 27 M.L.J 291; 10 I.C. 110 (111); 24 M. 147 P.C., *referred to*. *Held* also, that the widow has not by any act or omission on her part forfeited her right to claim arrears of maintenance for the four years prior to suit. (Rattigan, C. J. and Abdul Raoof, J.)

Mst. Bholi Bai *v. Mst.* Chimni Bai.—147 P.R. 1919; 2 Lah L.J. 60; 55 I.C. 2.

——*Maintenance—Widow—Rate of—Residence, right to.*

That under the Hindu law a widow is entitled to a suitable residence and also to a fixed recurring sum for her maintenance: that in fixing the amount of maintenance for a widow provision must be made for her reasonable wants, namely, for the purpose of charities and the discharge of religious obligations in addition to a reasonable provision for the food, raiment and lodging, having regard to the amount of the estate which is liable for her maintenance, her position in life and the circumstances of the family. (Shadi Lal and Le Rossignol, JJ.)

Mst. Kewati *v.* Chandu Lal.—123 P.R. 1916; 36 I.C. 985.

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——*Marriage—Forms of—Sikhs—Proof.*

Among sikhs forms of marriage are lax. If a sikh of position has made a woman his lawful wife the presumption is that all formalities are gone through. (Reid, C.J. and Rattigan, J.)

Dalip Kaur *v.* Fatti.—99 P.R. 1913; 41 P.W.R. 1913; 100 P.L.R. 1913: 18 I.C. 930.

——*Marriage—Validity of—Solemnised in sangat year—Absence of consent of guardian—Mother's right to select a husband for her daughter—Marriage effected in disregard of direction of court not to affect a marriage without its sanction.*

Held, that :—

1. A Hindu marriage performed at a time regarded inauspicious by the astrologers cannot be treated as ineffectual in law. 2. Under Hindu Law, in the event of the father and paternal male relations losing their right by death or walver to give a girl in marriage, the right of selecting the husband for a female infant devolves on the mother. 3. The rules as to the duty of giving Hindu girls in marriage are directory and not mandatory. Therefore, in the absence of force or fraud, a Hindu marriage, otherwise legally contracted and performed with the necessary ceremonies, is not invalidated by the absence of consent of the guardian entitled to give such consent. I. L. R. 14 Mad. 316; 1 M. L. J. 85; I. L. R. 19 All. 515; A. W. N. 1897, 139; I. L. R. 22 Bom. 812, *relied upon*. 64 P.R. 1884, *distinguished*. 4. The circumstances that the marriage of a Hindu girl was celebrated by her guardian in disobedience of the order of the Civil Court would not invalidate the marriage, if it was performed by the guardian in good faith and for the welfare of the minor, and, if in the absence of that guardian's appointment under the Guardians and Wards Act by the Court, the guardian would have been entitled to give the girl in marriage. 22 Bom 509, *followed*. (Shadi Lal and Le Rossignol, JJ.)

Mst. Maya Devi *v.* Ram Chand.—20 P.R. 1916; 177 P.W.R. 1915; 31 I.C. 186.

——*Marriages—Exchange—Marriages custom validity of Damages.*

Where the only consideration for the marrige of a girl is a sum of money to be paid for her, the contract would be one void as opposed to public policy.

A family arrangement amongst persons of the same class, by which the family. A gives a girl to be taken as a wife, on equal terms, into a family B, and a girl of a family B. is, at the same time, given as a wife into family A. stands on a totally different footing from what is realy the sale of a girl, the suitability of the marriage and the prospective happiness of the girl being entirely lost sight of in the latter case in view of the pecuniary gain.

A number of *Khatris* all of the same caste and community arranged a number of marriages amongst themselves, none of which was shown to be *prima facie* unsuitable or undesirable. There was nothing to show that the performance of any one of the betrothal

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contracts was to be made dependent on the previous performance of any of the others. The arrangements were made independently of each other, though at one and the same time. *Held*, that the betrothal contracts were not opposed to public policy and damages could be recovered on breach of them. (Anderson and Robertson, JJ.)

Amir Chahd *v.* Ram.—50 P.R. 1903; 95 P.L.R 1903.

——*Marriage—Daughter—Guardianship for purposes of marriage—Father and mother—Validity of marriage.*

A Hindu marriage is a sacrament and a marriage which is duly solemnised and is otherwise valid is not rendered invalid merely because it is brought about without the consent of the gurdian in marriage or even in contravention of an express order of the Court.

A marriage tainted by fraud is a voidable transction, but it is binding until it is set aside by a competent Court. Unless it is declared to be invalid, it can sustain an indictment for bigamy. (Shadi Lal, C.J.)

Gajja Nand *v.* Emperor.—2 Lah. 288; 8 P.L.R. 1922; 1922 Lah. 139; 64 I.C. 500.

——*Marriage—Validity—Rule prohibiting marriage between persons of same gotra—Applicability—Sudras governed by custom—Marriage recognised by brotherhood—Invalidity of custom—Proof—Onus.*

The rule of Hindu Law prohibiting intermarriage between person related as Sapindas applies only to the twice-born classes.

Held, that in the case of Sudras governed by custom, the onus of proving the invalidity by custom of a *karewa* marriage between persons of the same gotra, the marriage itself having been recognised by the brotherhood, lay on the person asserting it. (Shadi Lal and Le Rossignol, JJ.)

Amar Singh *v.* Jai Singh.—80 P.R. 1917; 138 P.W.R. 1917; 42 I.C. 351.

——*Marriage—Widow right to arrange daughters marriage—Consent of uncle.*

Under the Hindu Law, the mother is, after the father, the guardian of her minor daughter, and has right to select a husband for her daughter is not fettered by any necessity to consult or obtain the consent of the girl's paternal uncle. (Abdul Raoof and Martineau, JJ.)

Mst. Jiwanti *v* Mula Ram.—3 Lah. 29; (1922) Lah. 112; 67 I.C. 253.

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——*Marriage—Girl married during minority—refusal to consummate marriage suit for restitution, whether lies.*

Held that, restitution of conjugal rights should not be decreed, and freedom of choice should ordinarily be allowed where a Hindu girl married during her minority denies the factum of and refuses to consummate the marriage. (Johnstone, J.)

Mst. Kalawati *v.* Bukhan.—187 P.W.R. 1912; 215 P.L.R. 1912; 17 I.C. 254.

——*Marriage—Minor—Right to repudiate on attaining Majority—Restitution of conjugal rights.*

Among the Hindus marriage generally takes place at a very early age, when in fact both the boy and the girl are minors. Among them a marriage once performed cannot be dissolved for any reason whatever, and it would be repugnant to all notions and sentiments of Hindu society if the wife is given a freedom to repudiate her marriage as soon as she comes of age or before consummation takes place, merely on the ground that the marriage has been performed during her minority.

In case to which the parties are Hindus the mere fact that marriage takes place during the minority of the parties and that the girl repudiates the marriage before consummation is no sufficient ground for refusing a decree for restitution of conjugal right. (Abdul Raoof and Moti Sagar, JJ.)

Munshi *v. Mst.* Bhagwani—13 P.L.R. 1922; (1922) Lah. 79; 64 I.C. 356.

——*Marriage—Proof of—Presumption from cohabitation.*

The presumption in cases of long and continuous cohabitation is in favour of marriage, though the proof of direct evidence of marriage is unsatisfactory. The presumption can be rebutted only by strong, distinct and conclusive evidence and does not arise if the connection is illicit in its origin. Habit and repute may evidence but never can constitute marriage. A connection by adultery may be evidenced, after the adultery ceases, by habit and repute, to be a marriage, where marriage is possible between the parties. But where no valid marriage is possible, no amount of evidence as to habit and repute can establish a marriage. (Leslie Jones and Broadway, JJ.)

Indar Singh *v.* Thakur Singh.—2 Lah. 227; 3 Lah.L.J. 310; 63 I.C. 387.

——Marriage—Remarriage widow—Pregnancy—Cohabitation not being essential to a marriage—A pregnant woman might marry after the death of her husband. *See* Custom.

102 P.R. 1919; 50 I.C. 654.

——*Partition—Assignment by father of certain property to sons to enable them to start a business if amounts to.*

The mere assignment by the father of certain property to his sons to enable them to start in business on their own account

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has not the same affect as a formal partition of the joint property. (Scott-Smith and Broadway, JJ.)

Nanak Chand *v.* Lachman Das.—82 P. R. 1917; 97 P.W.R. 1917; 40 I C. 775.

——*Partition—Award singing of—Effect—Partial partition—Proof of—Burden of proof as to jointness.*

Held, that where a Hindu family consisted of a father and a son, and the whole of its property was originally joint, but subsequently the father dealt with various properties as if he were their sole owner, the fact of his so dealing would not amount to proof of his right to do so as against his son. But when he is found actually selling certain properties to the son himself, the inference is obvious and conclusive that some sort of partition of the property must previously have taken place. Under these circumstances, the burden of proof as to jointness is shifted and the party alleging jointness has to prove that a particular property still remained joint ancestral property. 7 B. H. C. R. 153 at p. 177; 143 P. R. 1882; 140 P. R. 1892. 8 Ind. Cas. 999; 97 P. R. 1910; 142 P. W. R. 1910, *followed*. (Rattigan and Scott Smith, JJ.)

Sukhdial *v.* Mani Ram.—29 P. R. 1915; 29 P. L. R. 1916; 27 I. C. 489.

——*Partition—Burden of proof—Presumption of jointness.*

The onus as to time of separation is on the party setting it up the general presumption being that a family is joint. (Reid, C. J. and Beadon, JJ.)

Mst. Rukhman *v. Mst.* Kirpa Devi.—338 P.L.R. 1913; 209 P.W.R. 1913; 22 I.C. 134.

——*Partition—Cessor of commensality, effect of.*

Per Le Rossignol, J—Mere cessor of commensality is not conclusive proof of disruption of a joint Hindu family, especially when the cessor was a mere accident and was forced upon some of the members by the circumstances of their professions. (Rattigan, Shah Din and Le Rossignol, JJ.)

Gokal Chand *v* Hukam Chand.—154 P.L.R. 1916; 70, 71 P.R. 1917; 109 P.W.R. 1916; 34 I.C. 714.

——*Partition, evidence of—History of family—Money dealings, inference from.*

Held, that the mere fact that no formal partition ever took place between the members of a Hindu family is not in itself conclusive against separation having occurred; the matter has to be decided upon an examination of the history of the family, of its mutual dealings, of its dealings with outsiders and upon admissions, if any, made by the members. 11 M. I. A. 75; 8 W. R. (P. C.) 1 = 1 Suth P. C. J. 657; 2 Sar. P. C. J. 218; 20 E. R. 30, *followed*. Money transactions between the members of a Hindu family, the one lending and the other borrowing and showing corresponding debts and credits

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in their books, go very far to prove disruption. (Johnstone and Shadi Lal, JJ.)

Munshi Ram *v.* Gainda Mal.—123 P.L.R. 1915; 45 P.W.R. 1915; 26 I.C. 390.

——*Partition—Evidence of alienations by members of portions of joint family property, effect of—Joint family, disruption of.*

The fact that for years past the various members of a Joint Hindu family have been repeatedly alienating various portions or shares of the family property as their own, is enough to show that a disruption of the joint Hindu family has taken place, although there has been no regular partition of the estate by metes and bounds. (Shah Din and Chevis, JJ.)

Mathura Das *v.* Gopal Das.—69 P.W.R. 1916; 33 I.C. 526.

——*Partition—Mother—Right to—Maintenance.*

Held, that the rule of the Mitakshara Law is firmly established that a mother is entitled only to maintenance until partition and that she can never herself demand a partition. But if a partition takes place by the act of others, not being strangers, she will be entitled to receive a share, if the effect of that partition is to break up or diminish the estate out of which she would otherwise be maintained. Mayne's Hindu Law, 8th Edition, paragraph 479, *relied on.* (Shadi Lal and Broadway, JJ.)

Mst. Ganesh Devi *v.* Darshan Singh.—2 Lah. L.J. 377; 56 I.C. 478.

——*Partition of part—No presumption of partition, of whole from partition, of part when no information available as to part divided.*

The presumption arising from a partition of a portion of the family property that the whole was divided is not a strong one particularly when there is no evidence as to what property was actually divided. I. L. R. 33 All. 677, *referred to.* (Shah Din and Scott Smith, JJ.)

Sham Das *v.* Pohlo Ram.—18 P.W.R. 1913; 16 P.L.R. 1912; 18 I.C. 604.

Partition—Partial—Presumption—Division of all properties.

Where a partition takes place between members of a family the presumption is that the partition is in status and in respect of all properties. If some properties are left undivided, there is no presumption that the co-parcenery interest subsists in those properties. (Scott Smith and Martineau, JJ.)

Bola Denu *v.* Makhan Chand.—12 P.R. 1918; 44 I.C. 561.

——*Partition—Partial partition—Presumption—Onus.*

Held, that when a partial partition of the property of a joint Hindu family is admitted the presumption is that there was a complete partition and the *onus* is on the party alleging that it was not a complete one to prove it. Mayne's Hindu Law, 8th Edition,

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at page 689 ; Hindu Code by Gour at page 700, article 148 ; 7 Bom. H. C. 153; 121 P. R. 1918, *relied on*. (Scott Smith and Martineau, JJ.)

Kishen Chand *v.* Behari Mal.—2 Lah. L. J. 570; 68 I. C. 297.

——*Partition—Partial property.*

Where the power of gift *inter vivos* exists, power to transfer by will is to be presumed until the contrary is proved. 48 P. R. 1903; 111 P. L. R. 1903, *followed*. Acquired property, whether moveable or immoveable, is ordinarily alienable according to the will and pleasure of the last full owner. Property purchased by a person out of the income of his father's estate or with his own earnings independently of that estate is not ancestral property. (Kensington and Jonstone, JJ.)

Karm Bakhsh *v.* Chiragh Din.—56 P.R 1911; 190 P.W.R. 1911; 104 P.L.R. 1912; 12 I.C. 862.

——*Partition—Partition of joint family property—Plaintiff to be given option of amending the plaint—Costs on part decreed.*

Held, that a suit does not lie for partition of a portion of a joint family property. But in such a case the best and the most equitable course for the Court to adopt is to give the plaintiff an opportunity of amending the plaint if he so desires.

Held, also that pleader's fee can be allowed only on the portion of the claim decreed and not on the whole amount in dispute. (Scott Smith and Broadway, JJ.)

Ranku *v. Mst.* Hukmi.—156 P.W.R. 1916; 2 P.L.R. 1917; 35 I.C. 545.

——*Partition—Proof—Deposition, probative value of.*

A statement made in a deposition as a witness that separation of family had not taken place is a piece of evidence against the deponent but it does not bind him in a subsequent case to which he is a party when there is sufficient evidence pointing out that partition and separation had already taken place. (Shah Din and Chevis, JJ.)

Lok Nath *v.* Amar Nath —24 P.L.R. 1911; 129 P.W.R. 1911; 9 I.C. 541.

——*Partition—Proof of.*

Where the parties have been separate in food and worship for 40 years enjoying portion of family property separately, treating the shares as their exclusive property by alienations, etc. *Held*, that there was disruption of family and a separation by metes and bounds may not have been made. (Johnstone and Shah Din, JJ.)

Mehr Singh *v.* Devi Dayal.—38 P.R. 1912; 19 P.L.R. 1912; 32 P.W.R. 1912; 13 I.C. 50.

——*Partition—Proof of—Custom—Possession by son adopted into another family.*

In the absence of proof of custom a person alleging that the property in suit was inherited by his father cannot claim any

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share in the property left by the real father of his father and his possession of the latter property would ordinarily be considered adverse as against the collaterals of his father and fathers' real father. To establish their claim the collaterals must prove that the property is family property which they are entitled to inherit. (Shah Din and Chevis, JJ.)

Lok Nath *v.* Amar Nath.—24 P.L.R. 1911; 129 P.W.R 1911; 9 I C. 541.

——*Partition list—Registration—Necessity—Partition evidenced by oral testimoney plus two lists.*

A partition evidenced by oral testimoney plus two lists which in no way amount to a partition-deed needs no registration. (Johnstone, C.J. and Leslie Jones, J.)

Mahomed *v.* Mahomed Hamid.—33 P.R. 1917; 11 P.W.R. 1917; 38 I.C. 387.

——*Partition—Substituted security—Mortgagee entitled to proceed upon property allotted to his mortgagor.*

K, owner of only $\frac{1}{4}$th share, mortgaged $\frac{1}{2}$ of three shops and a *haveli* which formed a part of the estate. After the mortgage there was a suit between the co-sharers which was settled by arbitration and two *kholas* valued at Rs. 940 were awarded to *K*. On a suit brought by the mortgagee to recover the mortgage-debt. *Held*, that the only part of the estate against which the mortgagee could proceed was that which fell to the mortgagor on partition. 1 I. A. 106; 21 W. R. 233; 101 P. R. 1894, *followed*. (Chevis and Le Rossignol, JJ.)

Prem Shah *v.* Kahn Chand.—48 P.L.R. 1916; 128 P.W.R. 1915; 30 I.C. 31.

——*Partition—Suit for partial partition if maintainable.*

Held, that a suit does not lie for partition of a portion of a joint family property. But in such a case the best and the most equitable course for the Court to adopt is to give the plaintiff an opportunity of amending the plaint if he so desires. (Scott Smith and Broadway, JJ.)

Ranku *v. Mst.* Hukmi.—156 P.W.R. 1916; 2 P.L.R. 1917; 35 I.C. 545.

——*Reunion—Presumption—Separation of one—Reunion of others—Proof.*

Where one member of a joint Hindu family separates himself from the family, there is no presumption that the others remain united. When upon such separation the shares of the other members are fixed there is a virtual separation of all. An agreement amongst the other members to remain united must be proved like any other plea. 30 C. 725; (P. C.), *followed*. 31 A. 412, *explained*. (Rattigan and Williams, JJ.)

Nehal Devi *v.* Kishor Chand.—97 P.R. 1910; 142 P.W.R. 1910; 11 P.L.R. 1911; 8 I.C. 999;

——*Partition—Reunion—Burden of proof.*

Where one co-parcener separates from others there is no presumption that the rest remain united. An agreement by them

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to remain united or to reunite must be proved by the persons alleging. (Scott Smith and Leslie Jones, JJ.)

Nil Kanth *v.* Jai Gopal.—60 I.C. 696.

——*Partition—Unilateral declaration—Execution of a will.*

An unequivocal declaration by a member of the coparcenary body of his intention to be divided in status is sufficient to effect a severance without an agreement between all the coparceners being required. 40 I. C. 36; 43 C. 1031; 35 A. 80; 12 N. L. R. 165; 45 *M.* L. J. 609, *referred to.* Where a Hindu coparcener specifies his share as one third in his will and thereafter purports to dispose of it, there is a division in status created by the will and the provisions of the will are valid and operative. (Broadway and Martineau, JJ.)

Jumma Ram *v.* Munsab Rai.—67 I.C. 812.

—— *Religious endowments—Mur Mahliya Bungah at Amritsar—Status of* Granthi.

According to Hindu Law there is a distinction between an absolute dedication of property to religions uses and an imperfect trust. In the case of the latter, the nature of the property remains unchanged, and its application remains at the discretion of the founder.

Held, that the Nua Mahliya Bungah, near the Golden Temple at Amritsar, partook of the nature of such imperfect trusts, and the plaintiff, representative of the family who found it, was entitled to control the *bungahi*, who could not be considered a *mahant*, and the *bungahi's* possession of the *bungah* could not be considered adverse to the right of the founder's family. (Anderson, J.)

Kishen Sihgh *v. Sardarni* Partab Kaur.—81 P.R. 1902.

——Reversioner—Consent to adoption by widow—Deed construction. *See* Deed—Construction.

24 P.L.R. 1913; 40 P.R. 1913; 17 I.C. 524.

——Reversioner—Consent to adoption—Consent of nearer reversioner to adoption binds remote ones. *See* Hindu Law, adoption.

78 P.L.R. 1914.

——Reversioner—Consent—Alienation by widow—Remote reversioners. *See* Hindu Law—Widow, alienation.

209 P.L.R. 1914.

——Reversioner—Consent—To alienation of a portion of estate by widow—Effect. *See* Hindu Law, Widow, Alienation.

209 P.L.R. 1914; 24 I.C. 482.

——Reversioners—Estoppel by consent of predecessor reversioners—Adoption by widow. (Rattigan, J.)

Nidhan Singh *v.* Sham Singh.—24 P.L.R. 1913; 40 P. R. 1913; 17 I.C. 524.

—— Reversioners—Gift by widow to daughter, if can be impeached—Custom among serian Khatris.

258 P.W.R. 1912; 17 I.C. 510.

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——Reversioner's interest, nature of—Vaule of interest—Relinquishment of—Registration when necessary *See* T. P. Act Section 6 (*a*)

135 P.W.R. 1911; 214 P.L R. 1911: 11 I.C. 211.

——Reversioner—Remote reversioner—Right to sue for declaration that alienation by hindu widow is invalid—Discretion of court. *See* Hindu Law, widow, alienation.

60 P.R. 1916; 88 P.W.R. 1916; 33 I.C. 763.

——*Reversioner—Right of after born reversioner to contest alienation.*

Held, that where at the time of an alienation, there was in existence a reversionary heir who was competent to challenge the alienation, a reversioner born after the alienation has *locus standi* to challenge the alienation. 55 P. R. 1903, *distinguished*. (Reid, C. J. and Rattigan, J.)

Babu Khan *v.* Mir Khan.—108 P L.R. 1913; 113 P.W.R. 1913; 18 I.C. 283.

——Reversioner—Rights of—If affeeted by purchase of ancestral property. *See* Criminal Procedure Code section 11, littigating under the same title.

68 P.R. 1915; 151 P.W.R. 1915; 31 I.C. 159.

——Reversioner—Right of—It can be validly relinquished—Registration. *See* T. P. Act, Section 6 (*a*).

135 P.W.R. 1911; 214 P.L.R. 1911; 11 I.C. 211.

——*Reversioners—Right of suit—Delay in filing suit—No estoppel by acquiescence.*

The mere fact that a suit by the reversioner challenging a gift of the last owner is instituted long after his death does not prove that plaintiff acquiescence in the gift and the plaintiff is not estopped by acquiescence. (Scott Smith and Leslie Jones, JJ.)

Bhag Mal *v.* Bhagwan Das.—125 P.W.R. 1917; 41 I.C. 636; 11 P.R. 1918.

——*Reversioner—Right to sue—Setting aside a will.*

Where a will alleged to have been made by the last owner is impugned, the suit to set it aside must be brought by the presumptive reversionary heir, but if the nearest heir had refused, without sufficient cause, to institute proceedings or had precluded himself by his own act or conduct from suing or had colluded with the widow or had concurred in the act alleged to be be wrongful and, if the next presumptive reversioner stated in the plaint the circumstances under which he claimed to sue a Court would exercise a judicial discretion in determining whether he was or was not competent to sue. 6 C. 764, *referred to*. (Abdul Raoof and Campbell, JJ.)

Sundar Lal *v.* Kulla Ram.—65 I.C 820.

——*Reversioner, suit by reversioners to contest alienation by a widow, in presence of a nearer heir—Maintainability—Contents of plaint—Sareen Khatri of Lahore.*

One C. R. a Sareen Khatri of Lahore, died leaving a widow, a daughter and a son of the daughter who was a minor. These three

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together sold a house which formed part of C. R's estate and the plaintiffs as reversionery heirs of C. R. sued for a declaration that the sale was invalid. It was found that the parties were governed by Hindu Law by which the daugter's son was the nearest heir after his mother's death. The question for decision was whether the plaintiffs had any *locus standi* to bring this suit.

As the daughter's son was a minor at the date of the alienation and was still a minor at the date of suit, he could not be said to have colluded with the widow and so precluded himself from suing and the plaintiffs were consequently not entitled to the declaration prayed for.

Held, also, that the plaintiffs as the more distant reversionary heirs should have stated their plaint the circumstance under which they claimed to sue in the presence of the nearest reversionary heir, and upon a plaint so framed the Court should have exercised its judicial discretion in determining whether the more remote reversioners were entitled to sue or not. 119 P. R. 1901; (Pages 412 and 419); 143 P. R. 1908; 34 All. 207; 18 I. C. 212; 32 Cal. 64; 28 M. 57, *referred to*. (Shah Din, J.)

Kanshi Ram *v.* Saradanand.—60 P.R. 1916; 88 P.W.R. 1916; 33 I.C. 763.

——*Declaratory suit—Death of alienor during pendency of appeal after decision—Right to sue abates—Remedy of plaintiff—O. 22, Rule 1 (Act V of 1908).*

Held, that the right to sue for declaring that a certain alienation will not affect the reversionary right comes to an end after the alienor's death and if the plaintiff does not choose to amend the plaint for getting consequential relief by paying the prescribed court-fee thereon neither the plaintiff nor any of his representatives is competent to maintain the suit or any appeal from the decree dismissing it. (Reid, C J. and Rattigan, J.)

Mst. Sat Bharai *v. Mst.* Sat Bharai.—49 P.L.R. 1913; 27 P.W.R. 1913; 18 I.C. 624.

——Reversioner—Suit by—Fathers sister's son—Heir entitled to consent the alienation made by mother. *See* Hindu Law—Inheritance Bandhus.

163 P.W.R. 1915; 31 I.C. 27.

——*Reversioner—Vendee from widow not entitled to stand in shoes of the previous mortgagee from whom he redeemed.*

In a suit by the reversionary heirs claiming a declaration that a certain sale is not binding so far as they are concerned, the Court has to determine whether the sale is binding as such. In all these cases the fact the vendee has paid off a prior mortgagee does not entitled him to urge against the reversioners that he can retain the land during the life-time of the alienor and can also stand in the shoes of the previous mortgagee from whom he had redeemed. (Rattigan, J.)

Partap *v.* Attar Singh.—262 P.L.R. 1913; 37 P.R. 1913; 20 I.C. 289.

HINDU LAW—SANYASI.

——*Sanysam—Reunciation of the world—What constitutes—Burden of proof.*

Where it appeared that in 1883. the plaintiff mortgaged his share in the house and left the village, that he then adopted a life of an itnerant mendicant and attached himself as chela to a guru, that he never re-visited his village and that he had not married.

Held, that under the circumstances the inference was not unwarrented that the plaintiff had renounced the world and abandoned his property and that the burden of proving the contrary was on the plaintiff and he had failed to discharge it. (Rattigan, C.J. and Shah Din, J.)

Lachman Gir *v.* Gopi.—18 P.W.R. 1918; 43 I.C 167.

——Sanyasi—Succession—Person succeeding to gaddi of a shrine and appointed as mahant—If loses right to family property—Not unless he becomes a sanyasi. *See* partition—Evidence of.

129 P.W.R. 1911; 9 I.C. 541.

——*Sanyasi*—Sudra fakir—*Renunciation of world by becoming* Sudra fakir—*Burden of proof.*

The burden of proving that a Sudra fakir has not renounced the world lies on the party alleging that such a fakir has not renounced the world. 15 P. R. 1875; 29 P. R. 1881; 7 P. R 1892, *referred to.* Ordinarily, it should be presumed that an Agarwal Bania of Iagroan on becoming a Sudra fakir has renounced the world and abandoned all his rights in an ancestral property. (Chevis, J.)

Lachman Das *v.* Retia—106 P.L.R. 1911; 237 P.W.R. 1911; 11 I.C. 378.

——*Settlement in favour of mother—Will by mothe—Fraudulent transfer—Benami transaction.*

In 1896 one *K L* a well to do jeweller of Delhi, died leaving a son *K. C.* and a widow *S* and a daughter, and his ancestral business in a prosperous condition valued at some lakhs of rupees. In 1898 *K. C.* purchased a block of house property in the name of his mother *S.* for Rs. 18,000 and in 1902 latter he made a similar purchase in her name of other property for Rs. 12,000. Some years after his father's death *K. C.* entered on a highly speculative form of business and borrowed large sums of money.

In 1902 *K. C.* was in serious straits. Latter on several decrees were passed against him and the house property purchased in 1898 and 1902 was attached. The mother executed a will in favour of *C.* wife of *K C.* bequeathing to her the two properties purchased in 1898 and 1902 and all other property inherited by her husband *K. L.* Objections were preferred by *C.* to the attachments but they were disallowed. She then filed the present suits for, *inter alia*, a declaration of her title to the attached proprerties and alleged that the purchase were made by *S* with her own funds. It was pleaded that the two purchases were fictitious, that the will was a forgery and that the properties did not belong to the plaintiff.

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Held, that there was nothing unreasonable or suspicious about the 1898 transaction, for *K. C.* was not at that time seriously embarrassed. Though the purchase was not made by *S* with her own funds yet she was entitled to the property, for the arrangement made by *K. C.* was a perfectly justifiable one and it did not appear that it was made by him to defraud his creditors. But the 1902 purchase must be treated as one in defraud of creditors, for *K. C.* was at that time much involed to his creditors. That the transdctions were not *benami*.

Held, also, that the genuineness of the will was established and that it was not invalid as regards the properties in suit. That it was ineffiectual in so far as it purported to deal with property other than the properties purchased in the name of the testator *S.* but it was not on that accouut open to objection as regards the purchased property. 121 P. R. 1893 and I. L R 10 Cal. 234, 61 P. R. 1889, *referred to* (Kensington and Rattigan, JJ.)

Mst. Chambeli *v.* National bank of India.—62 P.L.R. 1911; 10 I.C 647.

——*Stridhanam—Property inherited from father—If stridhanam.*

Property inherited from father by a Hindu woman is not her stridhanam. (Shah Din, C J. and Le Rossignol, J.)

Ramji Das *v.* Durga Prasad —6 P.R. 1918; 45 I.C. 90.

——Stridhan—Succession—Gift by husband to wife—Inheritance—Powers of alienation, restricted. *See* Hindu Law will.

97 P.R. 1916; 37 I.C. 128.

——*Succession—Bandhus—Mitakshara—Dayabhaga—Great grand-father's daughter's son—Sister's daughter.*

The weight of authority is in favour of the view that a Hindu sister's daughter cannot succeed *as bandhu* to her mother's deceased brother in Northern India, and the great-grandfather's daughters' son of the deceased is a preferable heir. 11 M. I. A 386, 402; 22 All. 338; 8 Mad. 107; 18 Mad. 168; 5 Mad. 241; 14 Mad. 149; 21 Mad. 263, *referred to.* (Robertson and Rattigan, JJ.)

Mangat Ram *v.* Devi Chand.—20 P.R. 1906; 69 P.L.R. 1906; 44 P.W.R. 1906.

——*Succession—Bandhus—Mitakshara Law.*

A paternal uncle's daughter's son is a bandhu. (Broadway, and Abdul Raoof, JJ.)

Tirath Ram *v.* Kahan Devi.—1 Lah. 588; 3 Lah L.J. 35; 60 I.C. 101.

——*Succession—Bandhu—Brother's daughter.*

A brother's daughter is not a bandu who can inherit according to the Mitakshara. 161 P. R. 1919, *dissented from-* (Leslie Jones and Wilberforce, JJ.)

Sarji Devi *v.* Jagir Mal.—3 Lah L.J. 32.

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——*Succession—Daughters of a collateral.*

Daughters of a collateral in the fifth degree of the last male holder are bandhus and heirs in the absence of agnate collaterals. (Leslie Jones and Broadway, J.J.)

Diyal Kaur *v.* Mahtab Singh.—3 Lah. L.J. 458.

——*Succession—Female heirs—Bandhu brother's daughter.*

The only females entitled to inherit under the Hindu Law are the widow, the daughter, the mother, the father's mother and the father's father's mother. A brother's daughter is not a heritable *bandhu*. 53 I. C. 815, *not followed*. (Leslie Jones and Wilberforce, JJ.)

Sujan Devi *v.* Jagiri Mal.—1 Lah. 608; 8 P.W.R. 1921; 59 I.C. 124.

——*Succession—Marriage—Stridhan—Ayautika stridhan—Mitakshara—Gift in favour of several persons without specifying shares—Joint and common tenancy.*

Held, that a gift by a hindu lady, governed by Mitakshara, to her four married daughters, incapable of forming a joint Hindu family is not a gift in joint tenancy merely because the share of each is not defined therein, but in the absence of any direction by the donor to the contrary, the donees are tenants in common to whom principle of survivorship does not apply and share of any of them dying passes to the personal representative of the deceased.

Held, also, that the share of the deceased donee in the nature of stridhan, which in case of her marriage having taken place in one of the four approved forms, devolves upon her husband to the exclusion of her parents sisters and other heirs. I. L. R. 23 C. 670 (P. C.); I. L. R. 28 M. 363, *followed*. I. L. R. XI C. 1 (P. C.); 27 P. R. 1891; I. L. R. 15 M. 678 (P. C.); I. L. R. 28 All. 38, *distinguished*. (Robertson and Shah Din, JJ.)

Munni *v.* Umrao Singh.—59 P.L.R 1909; 55 P.W.R. 1909; 39 P.R. 1909; 1 I.C 20.

——*Succession—Sister—Mitakshara law.*

A sister cannot under Mitakshara succeed to her deceased brother. (Broadway and Abdul Raoof, JJ.)

Tirath Ram *v.* Kahan Devi.—1 Lah. 588; 3 Lah.L.J. 35; 60 I.C. 101.

——*Succession*—Tewari Brahmins *of Amritsar City—Burden of proof—Nephew—Daughter's son.*

Held, that the parties to the suit, *Tewari Brahmins* of Amritsar City, being a non-agricultural class and having migrated from Oudh, must be presumed to have retained after immigration the law of their sect in the country of their adoption.

Found, that the plaintiff had failed to prove that by custom among *Tewari Brahmins* of Amritsar City a nephew of a childless propietor excluded his daughter's son in matter of succession to his estate.

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A family custom in derogation of the ordinary law cannot be supported on slender evidence of a few instances of modern date. I. L. R. 24 All. 273 (P. C.); 116 P. R. 1893; 43 P. R. 1899; 108 P. R. 1888, *referred to.* (Reid and Harris, JJ.)

Mst. Jamna Devi v. Chuni Lal.—30 P. R. 1903; 85 P.L.R. 1903.

—— *Widow—Acquisition of—Property, acquired with income of husband's estate, nature of—Test—Intention.*

The real test to determine whether the property acquired by a widow with a income of her husband's estate is her absolute property or forms an accretion to the estate, is to ascertain the intention of the widow.

Where, therefore, a widow, in her capacity as such, brought a suit for pre-emption of the land in dispute and having obtained a decree therefor paid the pre-emption price from the income of her husband's estate :

Held, that the mode of acquisition pointed to the conclusion that she did not mean to sever the land from the main estate and that, therefore, it became an accretion to her husband's property consequently she is unable to make a gift of such property without consent of her husband's reversioners. I. L. R. 10 Cal. 324 (P. C.); 10 I. A. 150; 13 C. L. R. 418; 7 Ind. Jur. 557; 4 Sar. P. C. J. 459, *referred to.* (Shadi Lal, J.)

Chela Ram *v.* Ishar Das.—41 P.W.R. 1916; 32 I.C. 831.

—— *Widow—Adverse possession—If adverse against reversioner.*

Held, that adverse possession against widows is not adverse possession against the reversioners. (Scott Smith and Dundas, JJ.)

Nand Singh *v. Mst* Dhan Kaur.—2 Lah.L.J. 573.

——Widow—Alienation. *See* also Custom and Hindu Law, Alienation.

258 P.W.R. 1912; 17 I.C. 519.

—— *Widow—Alienation—Aroras—Right of reversioners to contest the same in presence of a daughter.*

Reversioners of a deceased Hindu can, despite the existence of a daughter, sue for a declaration that an alienation made by the widow of the deceased shall not affect their reversionary rights. 149 P. R. 1908; 192 P. W. R. 1908, *followed.* (Johnstone, C. J. and Chevis, J.)

Tek Chand *v.* Soman Singh.—27 P.R. 1916; 147 P.L.R. 1916; 218 P.W.R. 1915; 34 I.C. 831.

——Widow—Alienation—Birth of son after—If alienation binding when it is for necessity. *See* Hindu Law—Inheritance principles of—After-born son.

1 Lah. 128; 1 Lah.L.J. 36; 56 I.C. 256.

—— *Widow—Alienation—Reversioner's consent effect.*

It is not open to a widow governed by Hindu Law to sell immoveable property inherited from husband, in order that she may retain a sum of money for the marriage of her child, which

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marriage is not likely to take place for many years to come. Nor can she alienate property to provide for her future maintenance. Where the nearest reversioners of a widow's husband, acting in good faith and with due regard to the interest of the family, give their consent to an alienation by the widow, a more distant reversioner has no *locus standi* to contest the alienation. (Johnstone and Rattigan, JJ.)

Tek Chand *v.* Gopal Devi.—46 P.R. 1912; 127 P.L.R. 1912; 180 P.W.R. 1912; 13 I.C. 482.

—— *Widow—Alienation—Consent of next reversioner—Effect—How far binding on remote reversioners.*

In all cases and under all circumstances the consent of the next reversioner of a Hindu widow in possession of her husband's estate to an alienation of a portion of that estate does not validate the alienation and debar the more remote reversioners from contesting it. The principles underlying such cases discussed and explained. 19 I. C 273; 17 C. W. N. 701; 17 C. L. J. 499; 40 C. 721, *relied upon*. (Shah Din and Scott Smith, JJ.)

Devidas *v.* Raja Khan.—209 P.L.R. 1914; 150 P.W.R. 1914; 91 P.R. 1914; 24 I.C. 417.

—— *Widow—Alienation—Declaratory suit by reversioner—Remote reversioner, when can sue—Discretion of court.*

Held, that :—

1. A suit for a declaration that an alienation by a Hindu widow shall not affect the reversionary rights of the plaintiff after the death of the widow, can be brought only by the presumptive reversionary heir who would succeed if the widow were to die at that moment. A person having a mere possibility of succeeding on the widow's death cannot maintain such a suit, if however, the nearest reversionary heir refuses without sufficient cause, to institute such a suit, or if he has precluded himself by his own act or conduct from suing or has colluded with the widow or concurred in the act alleged to be wrongful, the next presumable reversioner would be entitled to sue.

When a more distant reversioner institutes a declaratory suit, he must state in the plaint the circumstances under which he claims to sue in the presence of the nearer reversioner ; and upon a plaint so framed the Court must exercise its judicial discretion in determining whether the remote reversioner is entitled to sue or not, inasmuch as he is not entitled to the declaration asked for as a matter of right. On the one hand, the Court has to consider whether the plaintiff's chances of succession to the property in dispute are so remote that no declaration should be granted, and on the other hand, it has to decide whether the declaration, if made, would serve the purpose of perpetuating testimony for whosoever might happen to be the next reversioner on the death of

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the widow. I. L. R. 6 Cal. 764 (P. C.) ; 8 C. L. R. 381; 8 I. A. 14; 4 Shome L. R. 78; 4 Sar. P. C. J. 195; 5 Ind. Jur. 161, *followed*. (Shah Din, J.)

Kanshi Ram *v.* Sardanand.—60 P R. 1916; 88 P.W.R. 1916; 33 I.C. 763.

—— *Widow—Alienation—Enquiry—Creditor's duty to make enquiry—Scope of rule and exception.*

Held, that where an alienee, who is an outsider, finds that the alienor's debt regarding which he must make inquiry is a decretal debt he need not make any further enquiry, and the reversioners will not be allowed to go behind the decree. But this rule will not apply where it is clear that the alienees suspicions should have been aroused by the surrounding circumstances or where it is proved that he actually had knowledge of the bad faith of the decretal transaction. (Johnstone and Shah Din, JJ.)

Umardin *v.* Budhe Khan.—23 P.W.R. 1912; 21 P.L.R. 1912; 13 I.C. 58.

—— *Widow—Alienation—Exchange by widow not binding.*

Held, that without the consent of reversioners a widow entitled to hold land for her lifetime cannot effect an exchange except for necessity. (Shah Din and Chevis, J.)

Mst. Nihali *v.* Lehna.—46 P.L.R. 1911; 2 P.R. 1911; 27 P.W.R. 1911; 9 I.C. 675.

—— *Widow—Alienation—Gift to a daughter's son—Naru Rajputs—Custom—Alienation—Inheritance—Gift of ancestral land by widow in favour of her husband's near collateral who is also his daughter's son—Naru Rajputs of Tahsil Phillour in Jullundur District—Exclusion of daughters—Burden of proof—Limitation—Estoppel—Mutation of names on consent by minor's mother—Acquiescence—Limitation Act (XV of 1877), Sch. II, Art 141.*

Among *Naru Rajputs* of *Tahsil* Phillour in the District of Jullundur, daughters are excluded from inheriting ancestral property by collaterals related in the fifth degree. A gift by a widow of her husband's land in favour of his daughter's son is not valid without the consent of the collaterals even if the donee be also near collateral of her husband. 179 P. R. 1889; 80 P. R. 1875; 98 P. R. 1891; 69 P. R. 1878; 172 P. R. 1889, and 38 P. R. 1870, *referred to*. (Johnstone and Chevis, JJ.)

Khaire Khan *v.* Ghulam Ghaus.—46 P.W.R. 1911; 32 P.R. 1911; 238 P.L.R. 1911; 10 I.C. 387.

—— *Widow—Alienation—Gift by widow—Chaddar jats of Jhugewala Tahsil, Alipore District, Muzaffargarh.*

A widow succeeding without any objection by her husband's collaterals, to property which was settled upon her in lieu of dower holds it exactly as if it was her self-acquired property belonging to her own right, over which she has complete control, and which she can dispose of as she please. A gift therefore, of such property

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by the widow to her daughter is valid. 62 P. R. 1905, s. c. 145 P. L. R. 1905, *cited*. (Kensington and Shah Din, JJ.)

Sohaura *v. Mst.* Sahib —225 P.L.R. 1911; 154 P.W.R. 1912; 11 I.C. 513.

—— *Widow—Alienation—Gift to charity—Consent by reversioner to widow's applying estate to charity—Gift to another valid.*

Where the reversioners to a Hindu women's estate, gave the widow authority to devote the property to any charity, but the particular form of charity which she had selected having failed, she applied the property to another form of charity.

Held, that the reversioners were not entitled to impeach it, as a general intention to give to charity was agreed to by them. (Rattigan and Shadi Lal, JJ.)

The Bhiwani Orphanage Association Hissar *v.* Parma Nand.—43 P.L.R. 1916; 7 P.W.R. 1916; 31 I.C. 737.

—— *Widow—Alienation of property inherited from father—Right of husband's collaterals to question.*

Held, that the house property inherited by the widow from her own father was not, strictly speaking, her *stridhan* according to Hindu Law, but that the plaintiff, a collateral of the widow's husband, being in no way connected with her father's family, had no *locus standi* to contest her power of disposition in respect of the property in question. (Shah Din, C. J. and Le Rossignol, J.)

Ramji Das *v.* Durga Parshad.—6 P.R. 1918; 45 I.C. 90.

—— *Widow—Alienation—Injunction, if can be granted.*

In ordinary cases, the reversioners of the last male owner are not entitled to obtain an injunction to restrain his widow in possession of her customary estate from alienating property. An injunction is a proper form of relief only when it is found that the widow is committing or is about to commit acts of waste in the sense in which that term is used in law. Where, therefore, in a suit by the reversionary heirs of the last male owner for an injunction to restrain his widows from alienating and wasting the property of their deceased husband, the plaintiffs failed to prove the alleged acts of waste except in two very minor particulars: *Held*, that they were not entitled to an injunction. (Rattigan, J.)

Mst. Tajo *v.* Allah Din.—124 P.L.R. 1916; 53 P.W.R. 1916; 35 I.C. 229.

—— *Widow—Alienation—Mortgage by—Part only of consideration for necessity—Suit for possession by mortgagee against reversioner—Mortgagee's right to proper—Liona'e possession—Incomplete contract.*

Held, that :—(1) In the case of a mortgage by a widow, if only a part of the consideration is proved to have been for necessity, the mortgagee is not entitled to recover possession of the mortgaged property from the reversioner after the death of the widow. (2) A reversioner against whom part only of the mortgage consideration is binding, is in the position of a mortgagor to whom part only of the consideration has passed and he can resist, on the ground of

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partial absence of consideration,-the mortgagee's suit for possession. He is affected by so much only of the consideration as was for necessity and is not affected by the fact that the balance of the consideration, not for necessity, passed to the widow mortgagor and must be treated as a party to a contract which has not been completed by the other party. (Reid, C.J. and Shah Din, J.)

Khaira *v.* Maula.—136 P.W.R. 1911; 49 P.R. 1911; 212 P.L.R. 1911. 11 I.C. 191.

—*Widow—Alienation—Mortgage without necessity of her husband's immoveable property, whether ancestral or acquired.*

A Hindu widow has no power to alienate without legal and urgent necessity her deceased husband's immoveable property, whether it is his self-acquired or ancestral property. 114 P. R. 1907; 52 P. R. 1912 ; 3 P. R. 1914. (Broadway, J.)

Fattu *v.* Partapi.—15 P.W.R. 1917 ; 39 I. C. 642.

—*Widow—Alienation—Necessity—Duty to manage the life-estate property.*

A mortgage made by a widow was declared to be valid for her life-time only; when it appeared that the income of the property of her husband in her possession was sufficient for her maintenance and other necessary expenses and the widow had fallen into the hands of the mortgagee who was encouraging her in unnecessary expenditure real or intended for his own purpose. (Kensington, J.)

Arjan Singh *v.* Indar Singh.—128 P.W.R. 1911; 233 P.L.R. 1911; 12 I.C. 429.

—*Widow—Alienation—Necessity—Expenses of marriage—Money borrowed for redeeming ancestral land and purchasing bullocks for agricultural purposes—Legal necessity—Presumption.*

Where the debt was incurred by the husband a long time ago the presumption is that it was for legal necessity and a sale by the widow of the ancestral house to discharge the debt is valid. Money borrowed for the marriage of an agriculturist is for legal necessity. (Johnstone, C. J. and Shah Din, J.)

Jiwana *v.* Nathu.—17 P.W.R. 1917 ; 38 I. C. 586.

—*Widow—Alienation—Future necessity.*

Held, that under the Hindu Law an alienation by a widow for the purpose of raising money for future necessities is not justified. 27 P. R. 1916; 67 P. R. 1884; 11 P. R. 1885, *followed*. *Held*, therefore, that a Hindu widow is not entitled to sell immoveable property in order that she may deposit a sum of money with her father and take it in case of urgent necessity or at the time of her daughter's marriage, which marriage is not likely to take place for several years to come. 46 P. R. 1912, *followed*. *Held*, also, that inasmuch as the widow was not under any pressing necessity to pay off the mortgage and the real object which she had in view in selling the house was to secure a sum of money

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for future needs, the alienation is not binding on the plaintiff except to the extent of Rs. 1,507 which had been paid to the prior creditors. 81 M. 153, *distinguished.* (Abdul Raoof and Martineau, JJ.)

Balla Singh *v.* Gurdit Singh.—3 Lah. L. J. 484.

— *Widow—Alienation—Necessity—Future necessity—Bulk of the consideration for necessity—Form of decree.*

A Hindu widow is not always bound to sell exactly for the amount for which there is legal necessity. In each case the court has to see whether having regard to the circumstances the alienation was a proper one. 1 B. L. R. 201; 14 C. W. N. 895, *referred to.*

The rule that a widow should not alienate in anticipation of a necessity is not an inflexible rule. What is to be seen is whether in the particular case the widow has dealt fairly towards the expectant heir. Even granting that a minor portion of the consideration is not proved to have been taken for legal necessity, the alienation ought to be upheld. 26 I. C. 178; 26 I. C. 418, *referred to.* (Abdul Raoof and Martineau, JJ.)

Naman Mal *v.* Har Bhagwan.—(1922) Lah. 317; 2 Lah. 357; 66 I.C. 362.

— *Widow—Alienation—Necessity—Lapse of time—Minor portion of consideration binding—Effect of* bona fide *contest of nearest reversioner—Income of estate—Suit to consent alienation brought after 30 years—Second appeal—Question of fact.*

Held, that following the principles enunciated in 91 P. R. 1914 that even if lawful necessity had not been established for an alienation by a Hindu widow of a portion of her husband's estate, the *bona fide* consent of her husband's nearest reversioner would validate the sale. The presumption arising from the consent as to the existence of necessity of reasonable enquiry by the vendee is a rebuttable one, but cogent proof of the absence of lawful necessity must be forthcoming before this presumption can be displaced.

That the finding by the Lower Appellate Court as to consent not being a *bona fide* one would ordinarily be finding but the matter not having been put in issue in the proper way by the Lower Court and the decision being based on erroneous premises the point could be discussed in second appeal.

That the alienation in question having been made 30 years before the suit and not challenged till 8 years after the widow's death and nearly 3/5th of the consideration-money being shown to be for necessity, it was inequitable to put the alienee to strict proof of necessity for the whole sum. (Shadi Lal and Broadway, JJ.)

Tara Chand *v* Kanshi Ram.—17 P.R. 1917; 71 P.L.R. 1917; 9 P.W.R. 1917; 39 I.C. 121.

— *Widow—Alienation—Necessity—Proof of—Quantum—Alienation—Very old—Effect.*

Where an alienation is sought to be contested after the lapse of a long series of years, the alienee should not be called upon for strict proof of legal necessity in respect of the various items constituting the consideration for the alienation. Evidence of a

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general character showing that there was some *prima facie* valid necessity for the alienation would suffice so far as the alienee or his legal representative is concerned. (Shah Din and Chevis, JJ.)

Jawala *v.* Nand Singh.—56 P.L.R. 1913; 18 I.C. 114.

——Widow—Alienation—Necessity—Payment of mortgage debt of next reversionary heir—Whether necessity. *See* Custom, Alienation by widow.

69 P.W.R. 1917; 142 P.L.R. 1917; 39 I.C. 785.

——*Widow—Alienation—Necessity—Religious purposes.*

By Hindu Law a widow's powers of alienation are restricted to religious purposes and the fact that there are no heirs capable of taking at her death does not affect these powers, and consequently the will of Mussammat Ind Kaur conferred no little on defendant. 8 Moo. I. A. 529 (551) P C. 32 Bom. 59 (71), *followed*. 3. P. R. 1914, *distinguished*. (Broadway and Abdul Raoof, JJ.)

Zineth Ram *v.* Kuhan Devi.—1 Lah. 588.

——*Widow—Alienation—Necessity—Maintenance—Consent of the reversioner—Attestation.*

Held, that although the widow's husband left a large area of land it was not necessarily very productive and the widows do not appear to have been able to live on it without becoming involved in debt, hence the charge created by the mortgages cannot be regarded as being without necessity.

Held, also, that as the plaintiff attested the mortgages and acted throughout as the attorney of the widows he is estopped from challenging the alienations as having been made without consideration and necessity. (Le Rossignol and Wilberforce, JJ.)

Arura *v.* Shivdev Singh.—4 Lah. L.J. 45; (1922) Lah. 61.

——*Widow—Alienation—Necessity—Maintenance—Future maintenance.*

A Hindu widow is justified in alienating her husband's estate where its income is insufficient for her maintenance. She is not obliged first to run into debt and then to sell the land in order to discharge the debt with interest added. If by first selling the land she can so improve the estate as to provide sufficient for her own maintenance, this is not merely a prudent but a necessary arrangement. (Chevis and Campbell, JJ.)

Radha Ram *v.* Kushi Ram.—(1922) Lah. 204; 66 I.C. 343.

——*Widow—Alienation by—Necessity—Sale of small portion of estate to meet litigation expenses forced on widow—Sale converted into mortgage—Burden of proof.*

Held, that, the money required by a widow to protect her life interest in litigation is a valid necessity justifying her to alienate her husband's immoveable property, particularly when the litigation has been forced upon her by her husband's own reversioners.

Held, also, that where an alienation has taken place to liquidate previous *prima facie* necessary debts, the alienee cannot be made

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responsible for ascertaining how far they were unavoidable, more especially when the widow has died before the items are disputed.

Held, further that a native woman is always at a disadvantage when forced into Court to defend herself. (Kensington and Johnstone, JJ.)

Bhikha *v.* Gokal Singh.—73 P.L.R. 1909; 46 P.W.R. 1909; 3 I.C. 671.

—*Widow—Alienation—Necessity—Proof—Debt paid to third person.*

Under the Hindu Law a widow cannot alienate immoveable property inherited by her from her husband except for special purposes. For religious and charitable purposes or for those which are supposed to conduce to the spiritual welfare of her husband she has a larger power of disposition than that which she possesses for purely wordly purposes and to support such an alienation she must show necessity.

The payment of a debt contracted by the widow from a third person does not of itself justify an alienation by her of immoveable property. (Shadi Lal and Martineau, JJ.)

Gawardhan Das *v.* Viru Mal.—1 Lah. 48; 55 I.C. 847.

—*Widow—Alienation—Reversioner's right to impeach—Cultivation of alienated land as lessee—No estoppel.*

The mere fact that a reversioner cultivated the lands alienated by the widow under the vendee so long as the widow lived, does not estop him from claiming the properties on the death of the widow. (Le Rossignol and Wilberforce, JJ.)

Babar Khan *v.* Kishan Chand.—72 P.R. 1919; 52 I.C. 845.

—*Widow—Alienation—Setting aside—Reversioner—Daughter—Agnate*

Held, that in case of an alienation by a widow a brother of widow's husband is competent to maintain a declaratory suit in presence of his daughter. 27 P. R. 1916, *followed*. (Abdul Raoof and Martineau, JJ.)

Balla Singh *v.* Gurdit Singh.—3 Lah. L.J. 484.

—*Widow—Alienation—Reversioners—Parties to suit—Powers of execution Court.*

Decree for possession of shops, &c, and costs, was passed against a Hindu widow. After her demise the plaintiff applied for execution. The reversioners objected that the decree could not be enforced after the death of the widow.

Held, that the plaint as framed did not claim the relief as against the whole estate; the reversioners who were not made parties to the suit were not bound by the decree and the question that money was required by the widow for necessity could not be enquired into in the execution department. But the decree could be enforced against any property left by the widow which may be found to have been acquired by her. (Clark, C.J. and Reid, J.)

Tokoo Ram *v.* Karam Chand.—105 P.R. 1900; 30 P.L.R. 1901.

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—— *Widow—Alienation—Setting aside—Portion of money spent on Chaubarkh ceremony of last male owner's second wife—Receipt of part of purchase money by reversioner—Estoppel—Sale valid.* See *Custom—Alienation.*

Rodu *v* Daropati.—27 P.W.R. 1916 ; 33 I. C. 999.

—— *Widow—Alienation—Setting aside—Alienation—Compensation for improvements—Evidence—Relationship—Statement in will of widow—Conjectural suggestion as to will in arguments.*

The plaintiff on the death of a Hindu widow brought a suit for possession of a certain house with its compound as the next heir of her husband and pleaded that an alienation made by the widow against his interest in favour of the defendant was invalid. The plaintiff alleged he was the son of a daughter of her husband by a former wife. The allegation was denied by defendant. The plaintiff produced a Will made by the widow five years before suit, mentioning the plaintiff as daughter's son by relationship.

Held, that the statement in the Will was a weighty piece of evidence of the plaintiff's relationship, and that the widow was the proper person to make such a statement of fact, which was within the scope of her own knowledge, specially when the statement was corroborated by other relatives mentioned in the Will and whose evidence on the matter was against their interest, and was uncontradicted by any reliable evidence.

Held, also, that erection of a temple in the compound of a house could not be regarded as an improvement. The alienee was permitted to remove materials for the building was not erected with the consent of the plaintiff and his acquiescence was not proved. The Chief Court allowed half the amount spent in adding another storey to the house and sinking a well. I.L.R. 20 Bom. 298, *referred to.*

(Rattigan and Chitty, JJ.)

Mathu Mal *v.* Kidar Nath.—77 P.L.R. 1916 ; 36 I.C. 62.

—— *Widow—Consent of reversioner whether binding on son.*

Where a man sues for a declaration that an alienation made by a female in possession shall not affect his reversionary rights.

Held that he is bound by the consent given by his father, provided such consent was given *bona fide* and not collusively.

(Rattigan, J.)

Habib Khan *v.* Muhammad.—68 P.R. 1912 ; 194 P.W.R. 1912; 210 P.L.R. 1912 ; 16 I. C. 463.

—— *Widow—Decree against, binding on reversion—Fair and* bona fide *contest.*

One D. mortgaged in 1889 the land in suit to defendants by a document of conditional sale. In 1898 the mortgagee served a foreclosure notice on *D's* widow who was in possession and in 1908 brought a suit for possession as full owners and obtained a decree. On the widow's death the collaterals of *D.* brought the present suit for redemption.

Held, that inasmuch as there had been a fair and square trial between the widow and the mortgagee and the widow had done

HINDU LAW—WIDOW—DECREE.

all she could to protect the property, the decree in favour of the mortgagees put an end to the original owner's proprietary rights and consequently to the reversionary right also, and that, therefore, the plaintiffs' suit must fail. 29 P. R. 1898, *distinguished.* (Le Rossignol, J.)

Dani Chand *v.* Thanian.—44 P.L.R. 1918; 32 P.W.R. 1918; 43 I.C. 523.

—— *Widow—Decree against—Compromise decree and award—How far binding on reversioners—Decree and award.*

It is now settled law that a decree obtained, after fair contest in a *bona fide* litigation against a widow, relating to the estate represented by her, binds reversioners unless that decree can be impeached on some special ground. 9 M. I. A. 543, 139 P. R. 1888, *referred to.*

But where the decree is obtained against the widow through compromise the principle is subject to the qualification that the compromise was for the benefit of the estate and not for the personal advantage of the widow. 33 All. 356 (P. C.), *followed.* 34 I. A. 87; 23 C. L. J. 82, *followed.*

In regard to a decree obtained against a widow as the result of abritration proceedings to which she agreed, a decree following an award, where the arbitration has been regularly and properly held and where the case has been properly fought out, ought to be just as efficacious as where there has been no such submission.

As a general rule the principle applicable to a case decided after a fair contest in ordinary, *bona fide* litigation would apply to decrees obtained after an award and under normal circumstances the interests of reversioners would more probably be safeguarded in fair arbitration proceedings than where a widow settles a dispute by a compromise. (Shadi Lal and Wilberforce, JJ.)

Mst. Dhan Devi *v.* Gian Chand.—9 P.R. 1919; 49 I.C. 177.

—— *Widow—Gift by, to daughter—Acceleration of estate.*

Found, that no special custom contrary to Hindu Law exists among Sarin Khatris of Nayar Got of Lahore emigrated from, Kunjah in the Guzarat District, by which collaterals exclude daughters; and that, all Sarin Khatris of Lahore City follow Hindu law in matters of succession. 143 P. R. 1882, *followed.*

Held, that, as, by Hindu Law, the daughter is an heir, a gift by a widow of a Sarin Khatri of Lahore of her husband's separate moveable and immoveable property, in favour of his daughter cannot be challenged by his collaterals, as it simply amounts to acceleration of succession. C. A. No. 1818 of 1880 published as 249 P. W. R. 1912, *followed.* (Clarke, C. J. and Reid, J.)

Karori Mal *v.* Jwala Devi.—258 P.W.R. 1912; 17 I.C. 510.

—— Widow—Gift—Consent of reversioners if validates the gift. *See* Hindu Law, Will by father.

135 P.L.R. 1915; 222 P.W.R. 1915; 25 I.C. 910.

HINDU LAW—WIDOW—RIGHT OF INHERITANCE.

—*Widow—Gift to charity—Consent by reversioners to widow's applying estate to charity—Failure of one form of charity—Gift to another charity, if valid.*

Where the reversioners to a Hindu woman's estate, gave the widow authority to devote the property to any charity, but the particular form of charity which she had selected having failed, she applied the property to another form of charity.

Held, that the reversioners were not entitled to impeach it, as a general intention to give to charity was agreed to by them. (Rattigan and Shadi Lal, JJ.)

Bhiwani Orphanage Association Hissar *v.* Parmanand.—43 P.L.R. 1916; 7 P.W.R. 1916; 31 I.C. 737.

—Widow—Gift to—Nature of estate taken—Presumption. *See* Hindu Law—Gift.

53 P. L. R. 1919.

—*Widow—Mortgage by—Subsequent surrender of estate to reversioner—Right of reversioner to redeem mortgage—Disposition on redemption.*

A reversioner in whose favour a widow has surrendered possession of land in which she has a life-estate in lieu of receiving fixed maintenance reserving to herself its title is entitled to redeem a mortgage created in such land by the widow and after redemption the reversioner will stand in the shoes of the prior mortgagee. (LeRossignol, J.)

Jumma Ram *v.* Soni Bai—178 P.W.R. 1918; 50 I.C. 868.

—*Widow—Payment to widow of mortgage money.*

The payment to a widow of her share of the mortgage-money as one of the heirs of the mortgagee is valid for the purpose of redemption. 27 B. 292, *followed*. (Kensington and Beadon, JJ.)

Fateh Muhammad *v.* Sultan Muhammad.—97 P.W.R. 1913; 137 P.L.R. 1913; 19 I.C. 122.

—*Widow—Residence—Several houses left by husband—Decree-holder attaching one—Widow must prove that other houses—Insufficient for her accomodation.*

Held, that a widow's suit against the creditor of her husband who has attached a house belonging to him in execution of a decree claiming her right to reside in the house is not maintainable according to Hindu Law when she is unable to prove that the house attached is the only house belonging to her late husband which is suitable for her as a place of residence and that none of the other dowelling houses belonging to his estate would meet her requirement. (Rattigan and Williams, JJ.)

Mst. Rajji Bai *v.* Jesa Ram.—102 P.R. 1910; 44 P.L.R. 1911; 8 I.C. 1157.

—*Widow—Right of inheritance—Unchastity—Acquiescence.*

Held, that exchanging plots of land by the collaterals with the widow in possession of her husband's property who pre-deceased his father is sufficient to prove acquiescence on their part in her succession.

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Held, further that when such a widow succeed by custom or by acquiescence to her husband's property, either by way of maintenance or otherwise, she is entitled to continue its possession until her death or remarriage, but she does not forfeit her right to possess it merely by her becoming afterwards unchaste unless such a custom is pleaded and proved by her husband's reversioners. (Shah Din and Chevis, JJ.)

Karam Singh *v. Mst.* Dhan Kaur.—13 P.L.R. 1911 ; 5 P.W.R. 1911; 9 I.C. 37.

——*Widow—Right to redeem—Widow's power to allow redemption of land inherited from her husband—Custom—Alienation—Reversioner's right.*

Where a widow succeeds to land held by her deceased husband as mortgagee, she is entitled to receive the mortgage money on redemption, and the mortgagor is not bound to see that the money paid to redeem the land is secured for the benefit of the estate, nor is it his duty to associate the reversioners in the transaction. (Chevis, J.)

Dal Singh *v.* Bakshish Singh.—7 P.R. 1913; 136 P.L.R. 1913; 19 I.C. 8.

——Widow—Sale—Mortgage—Reversioner's suit to set aside—Decree, form of—*See* Limitation Act, Art. 141.

33 P.R. 1911; 190 P.L.R. 1911; 11 I.C. 392.

——Widow—Succession to estate of—Custom. *See* Hindu Law, Succession—Widow.

203 P.W.R. 1915; 8 P.R. 1916; 32 I.C. 522.

——WILL.

——*Will—Absolute estate—Female—Power to dispose of by will.*

A Hindu female can will away properties to a female if the properties had been granted to the testatrix absolutely. (Kensington and Rattigan, JJ.)

Chembelli *v.* National Bank of India, Limited.—62 P.L.R. 1911 ; 10 I.C. 647.

——*Will—Absolute estate—Further gift to descendants.*

A will provided for absolute estate to the testator's widow, with power of alienation and further gift to the grandsons of whatever remained after the widow : *Held*, the widow obtained an absolute estate and the gift in favour of the grandsons was void for uncertainty. (Broadway and Abdul Raoof, JJ.)

Mohan Lal *v.* Niranjan Das.—60 I.C. 619.

——*Will—Construction of—Will in favour of female—Malik waris.*

Held, that a will in favour of a Hindu female conferring upon her rights of an owner and heir gives her heritable and transferable rights in the property bequeathed to her. I. L. R 30 All 84 (P. C), *referred to.* (Clark, C J and Reid, J.)

Vaishno Das *v.* Deoki —214 P L.R. 1908.

——*Will—Construction—Bequest to adopted boy—Adoption invalid, effect*—Persona designata

When a Hindu widow makes a will in favour of a boy whom she has adopted and it is found that the adoption is invalid, it has to be ascertained whether the mention of the legatee as an

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adopted son is merely descriptive or whether the assumed fact of his adoption is the reason and motive of the bequest and intended as a condition of it, and if the latter is found as a fact, the will is of no effect.

As however in this case it was clear that the widow wanted the boy to succeed to her own property quite apart from, and independently of, his capacity of an adopted son, the bequest was good. (Shah Din, C.J. and LeRossignol, J.)

Ranji Das *v.* Durga Prasad.—6 P.R. 1918; 45 I.C. 90.

—— *Will—Construction—Devise of self-acquired property.*

Held, that, where a person bequeaths his self-acquired property to his grand-daughter, there is no presumption that the testator desired to limit the estate of the devisee. (Robert-on, J.)

Mst. Bhag Bhari *v.* Sadiq.—70 P.W R 1913; 102 P.L R. 1913; 18 I.C. 534.

—— *Will—Construction—Nature of estate.*

Where a Hindu bequeathed half of his land to his widows and half to his daughters, and, also provided that on the death of widows their half would go to his daughters, held the widows took only a life interest but the daughters took an absolute estate as their interest was not entailed by express words or by necessary implication. (Chevis, J.)

Nihal Kaur *v.* Secretary of State.—237 P.W.R. 1912; 13 I.C. 550.

—— *Will—Construction—Limited or absolute estate—Female donee.*

A Hindu executed a will bequeating his moveable and immoveable property in equal shares to his mother and widow using the terms "*Kulli ikhtiyar wa milkiat*" in the document. After his death his mother made a gift of her share to her daughter and daughter's son.

Held, that a will by a Hindu in favour of a female must be interpreted in the same way as if it was in favour of a male and that the word *milkiat* implies an absolute estate unless there is something in the context to qualify it. 30 All. 84 (P. C.); 81 P. R. 1911; 214 P. L. R. 1908; 32 I. C. 605; 30 Cal. L. J. 51; 53 I. C. 195, *followed*. 35 Bom. 279; 6 I. C. 141, *distinguished*. 27 P. R. 1898, *dissented*. (Chevis and Dundas, JJ.)

Mussammat Wazirdevi *v.* Ram Chand.—1 Lah. 415; 58 I. C. 988.

—— *Will—Construction—Aulad—Meaning of Aulad—Female descendents—Bequest to a daughter with remainder to the daughter of that daughter—Hindu donor can gift an estate only to those in existence at the time of making the gift—Stridhan—Heritable estate—Gift by husband to wife—Immoveable property—Predeceased daughter—Heir enventres mere—Daughter to be treated as a class when property left to all.*

Held, that :—

(1). The words "the above three daughters and their descendants shall be owners of the property in equal shares.....All

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the three daughters and their descendants shall be absolute proprietors thereof in equal shares" had the effect of vesting the estate in all the daughters and their issue in existence at the time of the testator's death.

(2). The word *Aulad* ordinarily means all descendants whether male or female.

(3). If a Hindu donor wishes to confer an estate of inheritance, it must be such as is known to Hindu Law which an English estate tail is not, and that a defeasance by way of gift *over* must be in favour of somebody in existence at the time of the gift.

(4). A provision in a Will that the ordinary rules of succession should not be followed, and a direction in the Will creating an estate not unknown to Hindu Law is valid.

(5). Immoveable property gifted by a husband to his wife is never at her disposal even after his death. It is her stridhanam so far that it passes to her heirs, not to his heirs, but as regards her power of alienation, she is under the same restrictions as those which apply to property inherited by her from a male. I. L. R. 16 Cal. 383; I. L. R. 9 Cal. 952; 4 B L. R. O. C. 166; L. R. 3 I. A. 7; 14 B. L R. 226, *followed*. I. L. R. 24 Cal. 647; I L. R. 10 All. 496; I. L. R. 5 Cal 684; I. L. R. 6 All. (P. C.) 560; I. L. R. 15 Bom. 652; I. L. R. 12 Cal. 663, *referred to*. 189 P. R 1892; 9 M. I. A. 123; 9 B. L. R. 377, *referred to*. (Reid and Clarke, JJ.)

Kallu Mal *v.* *Mst.* Chahindi.—97 P.L.R. 1916; 36 I.C. 222.

—— *Will—Construction—In favour of widow.*

Held, that wherever expressions indicating the creation of a full proprietary right in favour of a widow are to be found in the will she is to be treated as the full owner. 40 A. 575; 30 A. 84 (P. C.); 65 P.R. 1912; 61 P. R 1911; 54 I. C. 524, *relied on*. (Abdul Raoof, J.)

Mohan Lal *v.* Maya Lal.—18 P.L.R. 1921; 11 P W.R. 1921; 3 Lah. L. J. 132; 59 I.C. 231.

—— *Will—Proof of—Degree of.*

Held, that much technical proof may not be necessary for a Hindu will, but there must be some evidence to show that a document purporting to be a will by a Hindu was executed by him. (Broadway and Abdul Qadir, JJ.)

Har Bhagwan *v.* Hukam Singh.—3 Lah. 242; 4 Lah.L.J. 245; (1922) Lah. 243; 68 I.C. 769.

—— *Will—Testator bequeathing his property—Party not having interest in subject-matter—Private affairs beyond scope of trial.*

Where a Hindu had made a Will of his property in the absence of a son to his widow for life and after her death to her daughter's son or in default to widow absolutely, and the widow announced the birth to her of a posthumous son, and the brothers of the deceased brought a suit for declaration about the illegitimacy of the alleged posthumous son.

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Held, that plaintiffs had no status, under the Will, to maintain the suit, being neither immediate nor prospective reversioners : that not being competent to inherit, they were not entitled to bring a suit for declaration about the illegitimacy of the alleged posthumous son. However ; That, if the question as to defendant being a suppositious child had to be decided, evidence as to the facts was relevant, but further speculations in regard to the capacity of the deceased and his wife to beget a child, and all medical detail, connected therewith was beyond the fair scope of the trial, and the Court had most improperly, and scandulously allowed the trial of issues concerning the private affairs of the widow to be dragged in, which should have been scrupulously avoided. (Robertson and Kensington, JJ.)

Rallia *v.* Gokal Chand.—139 P.R. 1907; 198 P.W.R. 1907.

——Will—Guardian—Capacity to appoint guardian by nephew by will. *See* Guardian and Wards Act, S. 7 (3).

220 P.L.R. 1911; 220 P.W.R. 1911; 12 I.C. 452.

HINDU WIDOWS REMARRIAGE ACT, (XV OF 1856), S. 7.

——*Marriage—Hindu Law—A Khatri Kuka Sikh married—Custom —Validity.*

Held, that according to custom the marriage of a *Khatri Kuka* Sikh with a *Tarkhani* or *Jat* woman in *Karewa* form is not invalid and the offspring of such union are not illegitimate. 73 P. R. 1897, *referred to.* (Chatterjee and Kensington, JJ.)

Ranjit Singh *v* Isa.—15 P.L.R. 1907.

——*Remarriage of widow*—Khatris—*Ceremonies*—*Chadar Andazi.*

Held, that a marriage between a Khatri and Khatrani widow by *Chadar andazi* is valid and their offspring legitimate. 49 P R. 1903, *followed.* (Robertson and Rennie, JJ.)

Nathu *v.* Ram Das.—4 P.R. 1905; 20 P.L.R. 1905.

——*S. 1—Custom—Remarriage of a Khatri widow—Kerewa form of marriage.*

Held, that a woman who accepts the position of a mere concubine or *dharel* acquires thereby no legal status as a wife.

Held, also that it is not open to the Courts to discuss the validity of the re-marriage of a Hindu widow as if determined by custom in face of the clear provisions of the law in Section (1) of Act XV of 1856.

Held, further that when a Karewa marriage has in fact taken place the issue of such marriage cannot be placed under the ban of illegitimacy. 52 P. R. 1899; 49 P. R. 1903; 4 P. R. 1905; 22 P. R. 1889 and 46 P. R. 1891 (F. B.), *referred to.* (Robertson and Kensington, JJ.)

Narain Das *v.* Gujar Mal.—61 P.R. 1905; 155 P.L.R. 1905.

——*Ss. 3 and 5—Will—Hindu widow appinted guardian of property by will—Remarriage, effect of—Guardian and Wards Act, S. 39 (j).*

HINDU WIDOWS REMARRIAGE ACT, (XV OF 1856), S. 7.

Held, that in the absence of any clause in a Will, appointing a widow as guardian of the property of a minor, that her guardianship of property shall cease on her re-marriage, she does not become legally disqualified by re-marriage.

Section 5 of Act XV of 1856 expressly provides that a Hindu lady shall not, by reason of her re-marriage, forfeit any right to which she would otherwise be entitled; testamentary guardianship comes within the scope of her rights. (Kensington, J.)

Mst. Maya Devi *v.* Gopal.—47 P.L.R. 1913; 32 P.W.R. 1913; 18 I.C. 133.

——*S. 7—Minor Hindu widow—Remarriage—Custom—Consent—First marriage consummated—Widow's consent sufficient.*

The marriage of a minor widow is not valid, unless there has been consent of the persons enumerated in S. 7 of the Act.

But if the first marriage has been consummated, then the consent of the minor widow herself is sufficient. (Robertson, J.)

Raman *v.* Chinto.—9 P.L.R. 1912; 247 P.W.R. 1911; 12 I.C. 623.

HIRE PURCHASE SYSTEM—Pledged by hirer on—Valid—Possession.

See Contract Act, 1872, S. 178.

Abdul Hassain Khan *v.* Rangi Lal.—34 P.R. 1902; 23 P.L.R. 1902.

——*Rent—Omission to pay according to terms of agreement—Right of owner to recover full amount from hirer as well as guarantor—Rights of vendee from hirer.*

Under a hire purchase agreement with the plaintiff, owner of a sewing machine, it was agreed as follows :—the plaintiff agreed to let a sewing machine with accessories for which the hirer, having paid Rs. 20 as the first month's rent in advance agreed to pay the owner Rs. 5 regularly every month in advance. On failure of the hirer to perform the agreement the owner could re-take possession of the machine. The hirer could at any time during the hire become the purchaser of the machine by payment in cash of the price endorsed on the agreement. The guarantor agreed to guarantee the due payment of any sum of money which might become payable to the owner under the agreement. The hirer sold the machine to one P who sold it to F from whom the plaintiff, sought to recover it.

Held, that the contract was a contract of hiring and letting and did not amount to a sale, and the plaintiff was entitled to recover from the hirer and guarantor jointly and severally the full amount which the hirer agreed to pay for the monthly hire of the machine.

F, acquired no good title to the machine which he obtained at a time when the alienor was still merely a hirer of it and had not exercised the option of purchasing it from the plaintiff company, (1895) A. C. 471 : 6 Bom., L. R. 871, *followed*.

S. 108 Exception 1, of the Contract Act does not apply where there is only a qualified possession such as a hirer of goods has. 12 Beng. L. R. 42, *followed*. (Rattigan, C. J.)

The Singer Manufacturing Co., Lahore *v.* Niaz Ali.—144 P.W.R. 1918 ; 54 P.R. 1919 ; 46 I.C. 888.

HUSBAND AND WIFE—GUARDIANSHIP.

See also

Divorce Act.
Hindu Law.
Marriage and Restitution of Conjugal Rights.

——*Complaint against husband for keeping wife in confinement—Procedure to be adopted by the Magistrate—Criminal Procedure Code, S. 100.*

Held, that on a complaint against a husband for keeping his wife in confinement the Magistrate taking its cognizance is not allowed to pass an hasty order to the following effect :—

"S. B states that her husband is keeping her in confinement. She wishes to go to her mother. She is at liberty to go where she pleases".

Before finally disposing of the proceedings he is bound to hear both sides and after making such inquiry as may seem necessary he should pass such order as may seem right. If he finds the confinement amounted to an offence he should let the wife go and warn the husband against interfering with her except through a Civil Court. If on the other hand he arrives at the conclusion that such is not the case, he should advise the wife to go home with her husband warning the husband at the same time against using any coercion in taking the wife with him. (Johnstone, J.)

Sher Shah *v. Mst.* Sakina Begam.—29 P.W.R. 1910 Cr. ; 7 I.C. 354.

——*Custody of wife—Husband neglecting her for 15 years—Refusal of conjugal rights.*

Where for 15 years the husband never troubled about his wife, nor contributed to her support, never demanded her company and never in any way performed or offered to perform any of his duties as a husband;

Held, that the husband was not entitled to any help from Courts as he had failed to take steps within reasonable time to assert his rights and to take up his rightful position as husband and protector of the wife. 6 P. R. 1885; 95 P. R. 1898, *distinguished*. (Kensington and Shah Din, JJ.)

Mst. Jiwani *v.* Mangal Singh.—125 P.L.R. 1909; 126 P.W.R. 1909; 4 I.C. 974.

—— *Delivery of Possession*—By to the other—Circumstances constituting delivery. *See* Custom—Alienation.

74 P.R. 1914; 141 P.W.R. 1914; 92 P.L.R. 1914; 22 I.C. 712.

—— Guardianship—Husband if entitled to custody of wife by being appointed Guardian when no recovery of custody in Civil Court is possible. *See* Guardian and Wards Act, Ss. 7, 17 and 21.

231 P.L.R. 1911 ; 196 P.W.R. 1911; 11 I.C. 478.

——Guardianship—Minor husband and minor wife—Husband not to be allowed to obtain custody of his wife by being appointed guardian where he cannot obtain such custody by Civil Suit. *See* Guardians

HUSBAND AND WIFE—IBID.

and Wards Act (VIII of 1890), Ss. 7, 17 and 21. (Rattigan and Chevis, JJ.)

Bhagwana *v.* Ram Chand.—231 P.L R. 1911 ; 196 P.W.R 1911 ; 11 I. C. 478.

——*Ibid—Presumption of marriage—Continual cohabitation.*

Where it was proved that the deceased was some 80 years of age, and had been ill sometime before execution of the deed of gift in favour of his wife, and was actually ill on that date, the deed being registered at his house, and he died 3 days after, *held* (1) that it was a death bed gift and (2) that it was entirely invalid.

Held, that continual cohabitation as husband and wife raises a presumption of marriage. Accordingly, a woman found to have been living as wife for 10 or 12 years, and acknowledged as such in the deed of gift, held to be a lawful wife, though no marriage or formality of any kind was proved. (Clark, C. J.)

Ahmed Buksh *v.* Husain Bibi.—135 P.R. 1907.

——*Jurisdiction of Civil Court—Suit for declaration that the defendant is not the lawful wife of the plaintiff.*

When an order has been passed under Section 488, Criminal Procedure Code awarding maintenance to wife against the plaintiff as her husband.

Held, that a Civil Court has no jurisdiction to pass a decree that the wife was not entitled to receive maintenance; but it is competent to decide whether she was or was not the lawful wife of the plaintiff. (Chatterji and Maude, JJ.)

Waryam Singh *v. Mst.* Premon.—50 P.R. 1901; 158 P.L.R 1901.

——*Marriage—Dissolution of—Marriage not dissolved by apostacy of one of the parties.*

Held, that apostacy of one of the parties to a marriage in the case of Hindus, does not *per se* annual the marriage, and a Hindu husband's suit for restitution of conjugal rights cannot be defeated by the fact of the wife's conversion to Islam after her marriage with the plaintiff. (Johnstone and Rattigan, JJ.)

Mst. Jamna Devi *v* Mul Raj.—49 P.R. 1907; 83 P L.R. 1908.

——*Marriage—Dissolution of—Wife embracing Christian religion—Execution of decree—Decree for restitution of conjugal rights.*

The conversion of a Muhammadan wife to Christianity dissolves the marriage and a decree for restitution of conjugal rights passed against her prior to her conversion cannot be enforced by her Muhammadan husband. (Reid and Chatterji, JJ.)

Imam Din *v.* Hasan Bibi.—85 P.L.R. 1206 ; 148 P.L.R. 1906.

——*Marriage—Suit for disolution of—Death of plaintiff respondent—Damages—Abatement of claim against co-respondent.*

Held, that a suit by a husband for dissolution of marriage abates on the death of the respondent and the dismissal of the suit

HUSBAND AND WIFE—RESTITUTION.

entails abatement of the claim for damages preferred against the co-respondent. 30 L.J.P. and M. 172 *followed*. (Reid, J.)

S. *v.* S. and B. Co.—60 P.L.R. 1906 ; 69 P.L.R. 1907.

——*Restitution of conjugal rights—Suit filed with great delay—Neglect to maintain wife for number of years.*

Where for 15 years the husband never troubled about his wife, nor contributed to her support, never demanded her company and never in any way performed or offered to perform any of his duties as a husband.

Held, that the husband was not entitled to any help from Courts as he had failed to take steps within reasonable time to assert his rights and to take up his rightful position as husband and protector of the wife. 6 P. R. 1885: 95 P. R. 1898 *distinguished*. (Johnstone and Shah Din, JJ.)

Mst. Jawani *v.* Mangal Singh.—125 P.L.R. 1909 ; 126 P.W.R 1909 ; 4 I.C. 974.

——Restitution of conjugal rights—Divorce—Repudiation of wife—Transfer of wife by deed—Wife denying right of husband and transferee to conjugal rights—Declaratory suit—Appeal by one of the defendants when there is no common ground for all the defendants. (Robertson and Kensington, JJ)

Mst. Ishri *v.* Wadhawa.—31 P.R. 1908 ; 152 P.L.R. 1908.

——*Restitution of conjugal rights—Hindu girl married during minority—Refusal to consummate marriage.*

Held, that, restitution of conjugal rights should not be decreed, and freedom of choice should ordinarily be allowed where a Hindu girl married during her minority denies the *factum* of, and refuses to consummate the marriage. (Johnstone, J.)

Mst. Kalawati *v.* Bukhan.—187 P.W.R. 1912; 215 P.L.R. 1912; 17 I.C. 254.

——*Restitution of conjugal rights—Chader Andazi Ceremony Court discretion of.*

The restitution of conjugal rights is a matter entirely within the discretion of the Courts therefore the husband's claim should not be decreed where a widow, who may have been surprised into a *chadar andazi* ceremony with her brother-in-law, without delay repudiates the relationship and goes off to her own family. (Le Rossignol, J.)

Bhani *v.* Bansi.—28 P.W.R. 1916 ; 33 I.C. 1002.

——*Restitution—Prayer for injunction restraining re-union—Ancillary relief—Jurisdiction not effected.*

In a suit for restitution of conjugal rights, a prayer for an injunction restraining the principal defendant's father from preventing the re-union of plaintiff and the principal defendant is a relief merely ancillary and incidental to the main relief claimed and does not effect the question of jurisdiction. (Le Rossignol, J.)

Bhani *v.* Bhansi.—28 P.W.R. 1916; 33 I.C. 1002.

HUSBAND AND WIFE—RESTITUTION.

—*Restitution of conjugal rights—Strained relations between husband and wife—Apprehension of breach of the peace—Decree not to be passed.*

Held, that, a Court in India is not justified to pass a decree for the custody of a woman's person when the relations between the parties are of such a condition that it a obvious that a breach of the peace is likely to occur. (Robertson, J)

Mst. Karm Jan *v.* Abdul Jabbar.—166 P.L.R. 1913; 121 P.W.R. 1913; 19 I.C. 475.

HYPOTHECATION.

—Goats, Sheep, etc.,—Hypothecated—Contract of hypothecation if recognized in India. *See* Transfer of Property, 1882, S 70.

10 P.R. 1915; 16 P.L.R. 1916; 28 I.C. 230.

INCOME TEX ACT (II OF 1886), CHAPTER IV.

—*Whether the collector acting under that Chapter is a Revenue Court.*

Held, that the Collector in hearing objections to the assessment of income-tax under Chapter IV of the Income Tax Act was a Revenue Court and his proceedings were judicial proceedings within the meaning of Section 476, Criminal Procedure Code. 23 P. R. 1901 Cr.; 27 Cal 820 Cr, *distinguished*. 24 Mad. 121; 1 P. R. 1892 Cr.; 2 P. R 1892 Cr.; 23 P. R 1901 Cr.; 13 P. R. 1892 Cr., *referred to*. (Clark, C.J. and Reid, J.)

King Emperor *v.* Rup Singh.—44 P.R. 1905 Cr.; 187 P.L.R. 1905.

INCOME TAX ACT, 1918.

—*S. 3 (1)—Income received in British India—What constitutes—Liability to tax.*

The assessee was a contractor who did extensive work for the Government in British Baluchistan which was exempted from the operation of the Indian Income Tax Act, 1918. The assessee received the moneys due to him in British Baluchistan and brought them into the Punjab either by cheques or by transmission by post or personally. The Punjab Income Tax authorities sought to assess him on the profits so received. *Held*, the profits arose or accrued in British Baluchistan and were received there. The same profits could not again be received in British India. Consequently the income was not liable to Indian Income Tax. 43 M. 75, *distinguished*. (Shadi Lal, C. J., Scott Smith, Broadway, Abdul Raoof and Martineau, JJ.)

Sundar Das *v.* Collector of Gujrat.—3 Lah. 349 (F. B.)

—*Ss. 3, 5, 8—Club, if liable to assessment—Subscriptions, if 'income.'*

A club is liable under S. 8 of the Act to pay income-tax in respect of its house property. Subscriptions received from the members are not 'income' within Ss. 3 and 5 of the Act and is therefore not liable to income-tax under the Act. (Martineau, J.)

The United Service Club, Simla *v.* Emperor.—2 Lah. 109; 61 I.C. 886.

ILLEGITIMACY.

——Proof of—Illegitimacy—Litigation for custody of wife—No proof against legitimacy—Non-access to be conclusively shown to establish illegitimacy. *See* Evidence Act, S. 114.

49 P.L.R. 1914; 137 P.W.R. 1914; 22 I.C. 409.

ILLEGITIMATE SON.

——Rajput—Occupancy tenancy, right of succession to. *See* Punjab Tenancy Act, S. 59.

301 P.L.R. 1913; 203 P.W.R. 1913; 15 P.R. 1914; 20 I.C. 755.

——*Illegitimacy—Child born after marriage*

Where it was contended that a boy born about 7½ months after the marriage of his mother must be considered as illegitimate.

Held, that the contention was not valid.

That the time which elapsed between marriage and birth is altogether immaterial for determining legitimacy. A child born during wedlock is presumed to be the legitimate issue, no matter how soon the birth be after marriage. (Kensington and Lal Chand, JJ.)

Umra *v.* Muhammad Hayat.—79 P.R. 1907; 194 P.L.R. 1908.

——*Compensation for—Measure of—Enhancement in selling value of property only test.*

Where the Chief Court set aside an alienation made by a Hindu widow and gave the plaintiff, the next reversioner of the last male owner, a decree for possession of the property so alienated, on condition that the plaintiff paid the defendant, a certain amount as compensation for improvements.

Held, that in such a case, the real issue is to what extent has enhancement in value of the property been produced, and not what is the amount expended thereon; and that the erection of a temple on the property in suit does not of itself add to the selling value thereof. (Lord Shaw)

Kidar Nath *v.* Mathu Mal.—77 P.R. 1913; 127 P.R. 1913; 18 I.C. 946 (P.C.).

——*Compensation for—Person building upon land of another—Building under* bona fide *belief of title*

Government abstinence for a considerable period from suing for possession of land built upon by the defendants, the suit being within limitation, does not create an equity in his favour so as to deprive the Government of its strict rights. The position of Government differs from that of a private owner and a period of abstinence from suit, which would be excessive in a private owner, is not excessive in the case of Government. The Government in such a case has the option of making the defendant remove the materials of his buildings or paying compensation for the value of the buildings. (Reid, C.J. and Robertson, J.)

Rab Matullu Khan *v.* Secretary of State.—63 P.R. 1913; 113 P.L.R. 1913; 112 P.W.R. 1913; 18 I.C. 799.

——Purchaser *pendente lite-making—Bona fide* belief of title—Compensation to be given. *See* Compensation, suit for.

70 P.L.R. 1916; 92 P.W.R. 1916; 34 I.C. 957.

IMPROVEMENTS.

——Sale by some cosharers of house, during minority of others—Suit by them for possession—Delay—Compensation for improvements. *See* T. P. Act, S. 51

54 P.L.R. 1915 ; 247 P.W.R 1915 ; 28 I.C. 350.

INDIAN EXPLOSIVES ACT, (IV of 1882),

—— *S. 5—Patakhas—Fire-works—License.*

Held, that patakhas are not fire-works within the meaning of Act IV of 1882 and consequently no license is required either for their manufacture or sale. (Reid, C. J. and Johnstone, J.)

Bansedhar, Gian Chand *v.* The Crown.—8 P.R. 1910 Cr. ; 9 P.W.R. 1913 Cr ; 5 I.C. 911.

INDIAN SOLDIERS (LITIGATION) ACT, (XXI OF 1915).

—— *Ss. 4 & 8 Person serving under war conditions—Decree against—Right to have decree set aside.*

Where a defendant in a suit was serving under war conditions when the case was tried and was not represented by any person duly authorised to appear, plead or act on his behalf, it was the duty of the court to give notice to the prescribed authority. Default to comply with the provisions of the law entitled the said defendant within 3 months from the date on which he ceased to serve under war conditions to apply to have any decree passed against him set aside and such decree should be set aside against all defendants when the decision proceeds upon a common ground, *vide* Ss. 4 and 8 of the Indian Soldiers (Litigation) Act. (Shadi Lal, J.)

Sobha Singh *v.* Thakur Singh.—94 P.R. 1917 ; 172 P.W.R. 1917 ; 43 I.C. 272.

INDIAN SOLDIERS (LITIGATION) ACT, (IX OF 1918).

—— *S. 11—Applicability of—Service under war conditions.*

To attract the operation of S. 11 of Act IX of 1918 the plaintiff must show that he was serving abroad on war coditions before the expiry of the period of limitation. (Broadway, J.)

Feroze *v.* Ghulam Sarwar.—67 I.C. 379.

INJUNCTION.

—— *Direction of court—Interference by Chief Court in revision—Substantial grounds.*

Relief by way of injunction is discretionary with the Courts. The exercise of such discretion should not be interferred with on the revision side by the Chief court except on substantial grounds. (Rattigan, J.)

Hans Raj *v.* Narain Chand.—86 P.R. 1911 ; 229 P.W.R. 1911 ; 13 I.C. 716.

—— *Easement—Light and air—Intention to erect a balcony—Right of neighbour in a crowded City—Principles to be applied in granting injunctions—Sections 55 and 56 of Act I of 1877.*

Held, that in the case for the issue of injunctions where it is claimed that the danger to property is threatened, it will not do to say that a violation of the Plaintiffs right may be the result; that is plaintiff must show that a violation will be the inevitable result; that is; not in the sense of there being no possibility the other may,

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but in the sense that there must be such great possibility that in view of the ordinary men using ordinary sense the injury would follow. I. L. R. 24 Cal. 280 and L. R. 18 Equity 259, *followed*. 24 L. T. 186, *referred to*.

Held, also, that of all cases in which an injunction is sought, those in which the plaintiff, living in a crowded town desires to restrain proposed additions to the amenities of his neighbour on the ground that his own share of light and air are thereby diminished, demand especial caution on the parts of the Courts in this Country. A man is not necessarily entitled to the whole of the light and air to which he has been accustomed; a neighbour may come and share in these gifts of nature provided that he does not unreasonably diminishes the amenities of the plaintiff. (Agnew, J.)

Arjan Das *v.* Ganesh Das.—172 P.W.R. 1913; 308 P.L.R. 1913; 21 I.C. 249.

—— *Easement—Light and air—Substantial injury—Damages.*

Held, that any act by the defendant which controls or obstructs the light and air to which the plaintiff is entitled is *prima facie* an injury of a serious character. Nandkishor *v.* Bhagubhai, 8 B. 95, *followed*.

Where defendant commenced to erect certain buildings which threatened to obliterate the window in a room in the second storey of the house belonging to the plaintiff and both the Courts below inspected the property and came to the conclusion that the room would become practically uninhabitable if the window in dispute was entirely blocked.

Held, that the proposed erection of the building by the defendant is a very serious menance to the plaintiffs' property and he is entitled to an injunction. Kirpa Ram *v.* Gurbaksh, 2 P. R 1893, *followed*. Vir Bhan *v* Ramjidas, 8 P. R. 1909; The Delhi and London Bank Ltd. *v.* Hem Lal, 14 C. 839; Arjan Das *v.* Ganesh Das, 21 I C 249; Sethuram Madigai Row *v.* Gopal Row Peishwa, 23 I. C. 785, *referred to*.

Held, also that it having been proved that the plaintiff has acquired an easement whereby he is entitled to have free access of light and air through the window in dispute he is *prima facie* entitled to be maintained in his enjoyment of the said easement and he is not legally bound to meet the defendant by opening another window on the opposite wall or one of the other walls.

Held, further, that compensation would not meet the situation. Ramanujulu Naidu *v.* Apparanji Ammal, 9 I. C. 417, *followed*. (Broadway, J.)

Thakur Das *v.* S. Abdul Hamid.—2 Lah. L. J. 701.

—— *Form of—Nuisance—Working of factory—Restriction on.*

In a suit for an injunction to restrain a nuisance caused by the working of a factory at night if the plaintiff succeeds the decree should direct the defendant to refrain from carrying on the working of the factory in such a manner as to occasion a nuisance to the plaintiff. An absolute prohibition against the working of the

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factory during specified hours is unwarranted. (Broadway and Abdul Qadir, JJ.)

Chiragh Din *v.* Karim Bakhsh.—64 I.C. 169.

——*Grounds for—Discretion of Court—Injury.*

On a claim for an injunction the Court has to consider not merely whether the plaintiff's legal right has been infringed or even materially infringed but also whether under all the circumstances of the case he ought to be granted an injunction as the proper and appropriate remedy for such infringement. Where the parties were relatives on bad terms and the suit for injunction was prompted by desire to cause inquiry to the defendant, the Court would not grant the relief. 18 B. 474, *referred to.* (Shadi Lal, C.J. and Campbell, J.)

Ram Chandra *v.* Raghbir Singh.—67 I.C. 299.

——Hindu widow—No grant of injunction from alienating property. *See* Hindu Law, Widow, Alienation.

53 P.W.R. 1916; 124 P.L.R. 1916; 35 I.C. 229.

——*Light and air—Obstruction to—Erection of buildings—Damages—Discretion of Court.*

Where in consequence of the obstruction the plaintiff had less light and air than before to such an appreciable degree as to injure his property in point of value, comfort, convenience, or usefulness, according to its character as a residence or a place of business or warehouse an injunction is the proper remedy where substantial and wrongful injury had been done to the plaintiff's rights. 8 P. R. 1909; 308 P.L.R. 1913; 14 C. 839; 1 L. W. 166, *relied on.* Though it would be possible for the plaintiff to open another widow on the opposite wall or one of the other walls and it might be a neighbourly act on his party to meet the defendant in this way, he is not legally bound to do so and is entitled to enjoy the light and air that he has been enjoying through the window for over 20 years. 2 P. R. 1893, *referred to.* In cases of this kind, injunction is the rule and damages the exception. (1911) 1 M. W. N. 251; 8 B. 95, *relied on.* (Broadway, J.)

Thakur Das *v.* Abdul Hamid.—67 I.C. 288.

——*Nuisance—Noise caused by several persons—Abatement of nuisance—Right to call on azan—Inherent right.*

Mere noise alone on a proper case of nuisance being made out is a sufficient ground for an injunction.

Where a man who is entitled to a limited right exercises it in excess so as to produce a nuisance and the nuisance cannot be abated without obstructing the enjoyment altogether, the exercise of the right may be entirely stopped until means have been taken to reduced it altogether within proper limits.

The acts of two or more persons may, taken together, constitute such a nuisance that the Court will restrain all from doing acts constituting the nuisance although the annoyance occasioned by

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the acts of any one of them if taken alone would not amount to a nuisance. 71 L. T. 385, *referred to*.

Though a person has an inherent right to call out the azan from the mosque he has not the unlimited right of blowing conches and making noise so as to cause nuisance to his neighbours. (Petman, J.)

Jawand Singh *v.* Mahomed Din.—1 Lah. 140; 51 I.C. 728.

—— *Relief—When to be granted—Interference with easement.*

Where an interference of the right of easement is *prima facie* a source of grave inconvenience to a person and reduces the nature of his property, grant of injunction is the proper relief. (Leslie Jones, J.)

Mahant Ram Singh *v.* Bhai Ram Singh.—48 P.W.R. 1917: 39 I.C. 778.

— Suit for—Declaration of title and injunction—Valuation, for purposes of court fees and jurisdiction, *See* Court Fees Act, S. 7, Cl. IV. (c).

228 P.W.R. 1913; 111 P.R. 1913; 23 P.L.R. 1914; 22 I.C. 503.

— Suit for, opening of a doorway into public street—Cause of action—Special Damage. *See* High Way.

80 P.W.R. 1914; 179 P.L.R. 1914; 24 I.C. 902.

—— Suit for Restitution of Conjugal Rights—Prayer for injunction restraining re-union—Jurisdiction of Court *See* Husband and Wife.

28 P.W.R. 1916; 33 I.C. 1002.

—— Temparory—Absence of reasonable grounds—Right of aggrieved party to sue for damages—Proof of malice. *See* Damages, Cause of Action.

45 P.L.R. 1922.

—— *Temporary alienation.*

An alienation made pending a temporary injunction is not void. (Chevis and Shadi Lal, JJ.)

Bhagwan Das *v.* Kanshi Ram.—253 P.L.R. 1914; 145 P.W.R. 1914. 25 I.C. 180.

—— *Trade Mark—User of by Rival company—Pecuniary loss if essential—Charitable companies—Principles of, applicable to.*

A company is entitled to obtain an injunction to restrain a new company from carrying on the same kind of business as the old company under the same name with or similar to the plaintiff's company as to be calculated to deceive the persons dealing with the plaintiff company.

The principle is independent of the statutory rule found in the Companies Act, 1913, and does not recognise a distinction between business concerns and charitable societies provided it is shown that the similarily in names would cause pecuniary loss.

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The fact the new company has been registered and the Registrar took no objection to the registration does not preclude the old company from obtaining an injunction to restrain the new company from carrying on the same kind of business as that of the old company under a name calculated to deceive the public. (Shadi Lal and Dundas, JJ.)

Gurkha Association Simla *v.* Umar.—1 Lah.L.J. 161; 51 I.C. 905.

INSOLVENCY.

——*Adjudication—Insolvency petition—Subsequent composition with creditors—Petitioner, if can be adjudicated insolvent.*

Held, that when a person applying to the Court to be made an insolvent effects a composition with his creditors in full discharge of all his liabilities, he can no longer be regarded as an insolvent; consequently, the insolvency proceedings should be dropped by the Court. (Chevis, J.)

Ram Kishen *v. Mst.* Umrao Bibi.—80 P.W.R. 1916;33 I C. 730.

——*Arbitration—Civil Procedure Code, Schedule II—Provisions if not applicable to proceedings in Insolvency.*

The provisions of Schedule II of the Civil Procedure Code do not apply to proceedings under the Insolvency Act, and Court has no power to refer the whole proceedings to arbitrators to decide whether the petition for insolvency or in the case of a petition by a creditor the debtor should or should not be declared an insolvent. 88 P. R. 1887, *referred to.* (Rattigan, J.)

Ladha Singh *v.* Bhag Singh.—50 P.R 1916; 151 P.L.R. 1916; 135 P.W R. 1916; 34 I.C. 549.

——*Debts due to insolvent—Liability of insolvent debtors for interest on, after date of insolvency—Payment of debts into Court—Effect—Civil Procedure Code of 1882, S. 268 (a)—Prohibitory order if bar to payment into court.*

Held, that, an insolvent's solvent debtors cannot be absolved from the liability to pay interest on the ground that the insolvent has filed his petition in the insolvency Court.

Held, also, that at the date of insolvency, the assets of the insolvent's estate, which have to be divided among the insolvent's creditors include not only debts due to the estate but also the interest accruing till date of payment to the Official Assignee or other persons entitled to collect these debts.

Held, further, that the fact that there was a dispute between a Receiver appointed by one Court and an Official Assignee appointed by another Court in respect of the estate of an insolvent, does not take away the liability of the insolvent's debtor to pay interest; he can obtain a valid discharge by payment into Court. The issue of a prohibitory order under section 268 (*a*) of the old Civil Procedure Code does not debar the debtor from paying the money into Court and obtaining effectual discharge. (Beadon, J.)

Kanhaya Lal *v.* Radha Kishen.—112 P.L.R. 1913; 92 P.W R. 1913; 18 I C. 205.

INSOLVENCY—RECEIVER.

——*Fraudulent transfer—Power of Insolvency Court to decide—Question of.*

Where a person applied to the Bombay High Court to be declared an insolvent, and a creditor of his unsuccessfully opposed the application on the ground that the debtor had made fraudulent transfers, the creditor is bound by the decision of the Bombay High Court, and cannot, in a subsequent suit filed in the Punjab Court, raise the plea that the transfer of the property in suit was fraudulent and void, in spite of the fact that the property in question is situated in the Punjab. The estoppel is not based merely on the provisions of S. 41, Evidence Act, and even if it could be held that the decision was not a judgment *in rem*, it was a judgment *inter partes* and binds the creditor. (Reid, C.J. and Rattigan, J.)

Ram Narain *v.* Durga Dat.—55 P.R. 1912; 242 P.W.R. 1912; 13 I.C. 568.

——Fraudulent transfer—Setting aside—Transferee if can prove as unsecured creditor for insolvency. *See* Provincial Insolvency Act, S. 36, Cl. 6.

65 P.R. 1919.

——*Insolvent Estates Act (11 and 12 Vict. Cap. 21)—Punjab Laws Act IV of 1872, S. 27—Vesting order passed by High Court under statute —Jurisdiction of Punjab Court over property of insolvent.*

Held, that where a debtor declared insolvent under the system created by the Punjab Laws Act IV of 1872, is again subsequently adjudicated an insolvent under the Imperial Act (11 and 12 Vict. c. 21) of Parliament by any of the High Courts in the Presidency Towns the effect of the vesting order is to vest in the Official Assignee of that Presidency, whole of the insolvent's estate including the property which had already come under the control of the Punjab Court ; inasmuch as under the Punjab Act, what is entrused to the Punjab Court is merely administration, but no transfer of property takes place; and that the Imperial Act confers upon the High Courts in the Presidency Towns Insolvency jurisdiction extending over the whole of India while the Punjab Act can be effective only within the limits of the Punjab.

So where some members of a debtor firm were declared insolvents under Act IV of 1872 by the Amritsar Insolvency Court and subsequently all the members of that firm were adjudicated insolvents by the Bombay High Court, whole of the estate of that firm was held to be invested in the Official Assignee Bombay and the Amritsar Court was divested of the power of controlling the proceedings of the Bombay High Court. (Lord Macnaghten, Lord Atkinson, Lord Collins, Lord Shaw and Sir Arthur Wilson.)

The Official, Assignee, Bombay *v.* The Registrar, Small Cause Court, Amritsar.—45 P.R. 1910; 119 P.L.R. 1910; 68 P.W.R. 1910; 6 I.C. 273 (P.C.).

——*Receiver—Appointment of for realisation and distribution of assets—Right to sue.*

Where the managing partner of a firm which had suspended

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payments entered into an agreement with the creditors in pursuance of which both parties executed a deed appointing eight persons as receivers to realise the assets of the firm and distribute them among the creditors *pro rata*, and the receivers so appointed sued to recover a debt due to the firm.

Held, that the tenor of the document and the purpose for which it was executed pointed to the conclusion that the property vested in the receiver and that the insolvent had nothing whatever to do with it thereafter and that therefore, the receivers had a *locus standi* to maintain the suit. (Johnstone, C.J. and Shadi Lal, J.)

Panna Lal *v.* Dhumi Mal.—95 P.W.R. 1916; 59 P.L.R. 1917; 34 I C. 156.

——*Sale of immoveable property by Court—Provincial Insolvency Act, Ss. 22 and 23—Application to set aside sale—Fraud—Limitation—Limitation Act, S. 18, Arts. 166 and 181*

Held, that an application either of the Insolvent or his creditor for cancelling, on the ground of fraud, a sale of immoveable property of the insolvent conducted by the Insolvency Court in realizing assets of the insolvent under sections 20 and 23 of Act III of 1907 is governed by Articles 181 and not by Article 166 of the 1st Schedule to Act IX of 1908.

Held, also, that section 18 of the Act is general and under its force the time for making such an application begins to run only when the fraud becomes first known to the applicant.

Held, further, that the Court has inherent power to entertain such an application. (Scott Smith, J.)

Mir Afzal Ali *v.* Mir Aman Ali.—107 P.L.R. 1914; 36 P.W.R. 1914; 23 I.C. 397.

——*Sale order confirming—Appeal—Parties.*

When an appeal is filed against the order of a District Judge confirming a sale effected in insolvency proceedings, the auction purchaser and Official Receiver are necessary parties and the omission to make them parties is fatal to the appeal. (Martineau, J.)

Mst. Tarlok Devi *v.* Joti Ram.—68 I.C. 716.

——*Set off—Mutual credits and debits—Not to be extended where debtor purchases a debt with knowledge of insolvency.*

The defendants claimed set off against the plaintiffs, purchasers of the estate of the insolvents. *Held*, that the doctrine of set off is of equitable jurisdiction and its object is not merely to avoid cross actions but do substantial justice and to prevent the great injustice which would arise if a person who is the insolvent's creditor on one account and his debtor on the other is compelled to pay 16 annas in the rupee on what he owed to the insolvent and to receive less than that amount on what the insolvent owed him, that this doctrine cannot be extended to cover cases where at the time of insolvency one person owes a debt to the insolvent and with full knowledge that the later has become hopelessly involved buys up a third person's claim against the insolvent in order to relieve himself of the liability of having to pay his justice debt.

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Held, also, that the transaction relied upon by the defendants being a bogus one the set off claimed could not be allowed. The English Law on the subject discussed. Dickson v. Evans 3 Revised Reports, page 119, *In re* Milan Tramway, Company XXV Ch. D. 587, *referred to*. (Rattigan and Beadon, JJ.)

Radha Kishen *v.* Ganga Ram.—95 P.L.R. 1914; 118 P.W.R. 1914; 53 P.R. 1914; 23 I C. 927.

——Suit to establish right to property of the insolvent rested in the Receiver—Whether receiver necessary party—Sanction of Insolvency Court whether necessary—Whether sanction condition precedent.

54 P.R. 1917 ; 132 P.W.R. 1917 ; 41 I.C. 802.

——*Punjab Laws Act, (IV of 1872), Sections 25, 26 and 31—Rules under S. 31, R. 80—Punjab Courts Act (XVIII of 1884), Ss 39, 70 (1) (a) and (b)—Scope of S. 25—Concealment of account books—False allegations of debts—Order under S. 25 not a decree—Appeal—Revision—Material irregularity—Failure to comply with S. 30—Fraudulent transfer—Annulment—Separate suit—Revision application—Practice.*

Held, that:—(1) An order under section 25 of Act IV of 1872 passed by a Court of Insolvency constituted under the Act is not a decree and therefore, is neither subject to an appeal, nor to revision under section 70 I (b) of Act XVIII of 1884. 65 P. R. 1882 ; 33 P. R. 1883 ; 62 P. R. 1888 ; 70 P. R. 1904 ; 65 P. R. 1905, *followed*. (2) Section 25 of the said Act is not confined to the conduct in contracting the debts, but applies equally in case of concealment of account books so as to interfere with investigation into genuineness of debts alleged by the insolvent to exist. False allegations of the existence of debts, resulting or intended to result in wrongful disposal of the insolvents property and loss to genuine creditors is a gross misconduct to reference to the debts. (3) A person, a transfer of property to whom has been annulled as fraudulent under section 26 of the said Act is not at liberty to move the Chief Court on the revision side instead of filing a suit. 206 P. R. 1889 ; 108 P. R. 1890, *referred* to. (Reid, C. J. and Shah Din, J.)

Ram Chand *v.* Bila Mal.—64 P. R. 1911 : 187 P.W R. 1911 ; 12 I.C. 867.

INSURANCE.

——*Naming of beneficiary in the policy—Effect of.*

Where the husband of a lady supplied the premia but the name of the step-son of the lady was put as the person to whom the insurance amount was to be given, the amount belongs to the son and not to the husband even assuming that the principle of *benami* transactions were applicable to such a case. (Shadi Lal, C.J. and Martineau, J.)

Matin *v.* Mahomed Matin.—(1922) Lah. 145.

INTEREST AGREEMENT.

——*Absence of agreement to pay interest—Delay in bringing suit—Effect of.*

In the absence of an agreement to pay interest a creditor is entitled to a reasonable rate of interest and delay, in bringing a suit is no ground for refusing interest. (Wilberforce, J.)

Ladha Ram *v.* Muhammad.—59 I C. 708.

——*Agreement to pay express or implied—Interference by court, whether allowable.*

When a certain rate of interest is agreed upon by the parties either by express or implied agreement, the Courts have no power to interfere with such rate and are bound to allow the rate as agreed upon, if the contract is not otherwise invalid. There is absolutely no discretion in the matter, as is clear from S. 2, Act XXVIII of 1855. (Rattigan and Lal Chand, JJ.)

Baghu Mal *v.* Bandu —196 P.W.R. 1908 ; 110 P.R. 1908.

——*Balance of account—Rate of interest.*

When in striking the balance of an account interest at a certain rate is charged, it must be presumed that the same rate is to be chargeable till payment. (Shadi Lal and Le Rossignol, JJ.)

Ishar Das *v.* Harkishen Das.—148 P.W.R. 1916 ; 7 P.L.R. 1917 ; 35 I.C. 577.

——*Balance of account—Laches—No right o interest.*

A brought a suit on a balance claiming the amount acknowledged as due as well as interest. The first Court held that the plaint should be considered as amended so as to include the previous dealings between the parties, and the previous accounts were filed to enable the Court to deal with the claim. The appellate Court, on the authority of certain rulings, dismissed the suit as not maintainable being on the basis of a balance.

Held, that, as the balance included a good deal of interest and and A allowed nearly the full term of six years to run before putting defendant into Court, A was not equitably entitled to charge interest on the balance. (Kensington, J.)

Amir Chand *v.* Sundar Mal —7 P.L.R. 1912; 207 P.W.R. 1911; 12 I.C. 617.

——Contract to pay—How to be proved—Documents silent as to interest if other evidence could be admitted to prove contract to pay it, Sahuker's account books are admissible to prove contract to pay interest. *See* Negotiable Instruments Act, S. 80.

52 P.R 1911 ; 162 P.W.R 1911 ; 165 P.L.R. 1911 ; 10 I.C. 315.

——*Delay—Deed silent as to—Not entitled.*

Held, that as the document was silent as to interest, and B. waited for several years and did not take earlier steps to recover the amount of his advance on A's failure to carry out the contract, he was not equitably entitled to interest. (Kensington, J.)

Dharm Singh *v.* Ali Murad Khan.—6 P.L.R. 1912; 219 P.W.R. 1911; 12 I.C. 616.

INTEREST—HUNDI.

——*Delay—Practice—Interest when to be allowed.*

Interest cannot be allowed on the ground that the debtor delayed the payment of debt due by him, unless there is a contract to pay interest and the conditions of Act XXXII of 1839 are fulfilled. 55 P. R. 1901; 104 P. R. 1901; 19 P. L. R. 1902, *explained*; 30 B. 226; 7 Bom. L R. 995, *referred to*. (Agnew and Shadi Lal, JJ.)

Fillingham v. Captain C.L. Dunn.—266 P.L.R. 1913; 8 P.R. 1914; 20 I.C. 194.

——*Detention of money over—Due payment—Liability to pay interest, when arises.*

Where over due payments are made and there is no contract to pay interest on the over due payment and where there is no indication that any such promise is implied and no notice demanding interest is given interest will not be allowed. (Johnstone and Shadi Lal, JJ.)

Vinkley v. Wasava Singh.—55 P.L.R. 1915; 50 P.W.R. 1915; 28 I.C. 926.

——*Disallowance of—Delay in filing suit, if a ground for.*

Delay in filing a suit by itself not sufficient. (Scott Smith and Broadway, JJ.)

Bhagwan Singh v. Munshi Ram.—66 P.R. 1917; 135 P.W.R. 1917; 41 I.C. 915.

——*Excessive rate—Power of court to relieve against—Contract Act, section 16—No plea of undue influence.*

In a redemption suit based upon a mortgage-deed which provided that there could be no redemption until all principal and interest had been paid, the defendant mortgagee is entitled to interest up to the date of redemption and his claim for interest as defendant cannot be limited to the period beyond which he could not have been given interest in case he had come forward as plaintiff.

In a suit upon a contract expressly providing for the payment of interest, the Court may interfere with the contract and reduce interest only if the exercise of undue influence is both pleaded and positively proved, or if it is pleaded and the circumstances are such that under section 16, Contract Act, undue influence should be presumed. (Johnstone and Chevis, JJ.)

Joti Pershad v. Hakim Ali.—73 P.L.R. 1914; 41 P.W R. 1914; 22 I C. 528.

——*Hundi—Trade usage—Hundi not paid at Maturity—Rawalpindi.*

Found, that there was a well recognised rule in the city of Rawalpindi, that if interest was charged on a *Hundi*, and such *Hundi* was not paid at maturity, interest continued to be payable up to the time of payment at the rate originally agreed. (Rattigan and Scott Smith, JJ.)

Khialia Shah v. Hansari Mal-Mathu Mal.—24 P.R. 1915; 23 P.L.R. 1916; 29 I.C. 346.

INTEREST—MORTGAGE.

——*Mortgage—Charge—Redemption—Zur-i-rahan.*

In interpreting usufructuary mortgages for purposes of redemption the interest and redumption clause have to be separately considered on their-own merits as two distinct convenants.

Where a mortgage was redeemable according in its terms on payment of *Zur-i-Rahan* (mortgage-money)—

Held, that the mortgagor was entitled to recover possession on payment of principal only. 57 P. R. 1888; 8 P. R. 1890 ; 147 P R. 1890 (F. B.) ; 73 P. R. 1892 ; 77 P. R. 1898 ; 114 P. R. 1901, s c ; 175 P. L. R , 1901 ; 92 P. L R. 1905, s c ; 50 P.L R 1906, *referred to.* (Kensington, J.)

Bhag Mal *v.* Tale.—6 P.L.R. 1907.

——*Mortgage—Not contested within period of limitation—Next heir—Liable to interest.*

Where a mortgage was not contested within the period of limitation allowed by law, the next heir, when the estate devolves upon him, cannot contest his liability to discharge a bond executed for interest that had accured on the mortgage. (Agnew and Shadi Lal, JJ.)

Manual *v.* Prem Singh.—257 P.L.R. 1913; 202 P.W.R. 1913; 20 I.C. 665.

——*Mortgage-deed—Interpretation of.*

Where the mortgage-deed provided that the mortgagors will redeem the land in one year, paying the principal debt and interest at the rate of one per cent. per mensem, and in case of default the mortgagee may take possession of the land mortgaged in lieu of receiving the principal sum and interest, and the mortgagee claimed interest for the period subsequent to the expiration of the period fixed for the redemption of the mortgage and up to the date of the mortgagee's obtaining possession of the land, *held*, that the correct interpretation of the deed was that the mortgage was to be a simple one for the period of one year, and if not redeemed by that time, was to be converted into a usufructuary mortgage with possession. 19 All. 39 (P.C.), *distinguished.* (Robertson and Maude, JJ.)

Mohan Lal *v.* Mukim.—114 P.R. 1901; 175 P.L.R. 1901.

——Mortgage—Post diem interest allowed as a matter of contract apart from equity. *See* Bai Bil Wafa.

90 P.L.R. 1914; 107 P.W.R. 1914 ; 22 I.C. 680.

——Martgage suit—For what period to be allowed—Covenant to pay interest due before redemption. *See* Interest—Excessive rate.

73 P.L R. 1914 ; 41 P.W.R. 1914; 22 I.C. 528.

——*Interest—No agreement to pay—Suit on accounts.*

In suit on accounts where there is no agreement relating to interest and where no notice had been given that interest would be charged no interest is chargeable either under the Interest Act or as damages under S. 73 of the Contract Act. (Abdul Raoof and Harrison, JJ.)

Ranjit Singh *v.* Karim Bakhsh.—68 I.C. 678.

INTEREST—POST DIEM.

——*Period for which payable—Redemption suit—Limitation—Whether applicable in fixing interest.*

The law of limitation is not applicable to fix the period for which interest on mortgage debt is payable. In a redemption suit, therefore, the mortgagee is entitled to interest for the whole of the period of mortgage. (Shadi Lal and Broadway, JJ.)

Akbar Hussain *v.* Ragunandan Das.—8 P.L.R. 1921; 57 I.C. 348.

——*Post diem—Damages—Construction of bond—Instalments—Provisions as to payment of whole decretal amount.*

Where the bond, provided, that principal with interest at the rate of Rs. 1-8-0, per cent monthly should be repaid by one year after the lapse of which period payment would have to be paid on demand. *Held*, that the plaintiff was not entitled to *post diem* interest at the rate agreed and damages at the lower rate were properly awarded by the lower Court. I. L. R., XIX All., 39 *referred to* A Court passing a decree payable by instalments when no provision is made as to charging interest on the debt, should direct that failing punctual payment of any instalment the creditor should have it in his power to enforce payment of the whole amount. 73 P. R. 1882, *referred to*. (Anderson and Harris, JJ.)

Rugpat Rai *v.* Ghulam Jilani —95 P.L.R. 1902.

——Post diem—Stipulation for after due date whether payable when no agreement. *See* Mortgage—Interest.

23 P.W.R. 1916; 5 P.R. 1916; 32 I.C. 821.

——Post diem—Allowed at contract rate for 6 years. *See* Punjab Regulation XVII of 1806.

116 P.L.R. 1914; 95 P.W.R. 1914; 94 P.R. 1914; 22 I.C. 837.

——Post diem—Mortgage by conditional sale. *See* Punjab Regulations.

57 P.R. 1914 ; 256 P.L.R. 1914.; 25 I.C. 504.

——Post diem—Contract rate—Mortgage of house—House rebuilt—Value of old materials to be deducted from costs of improvement. *See* Mortgage—Interest.

105 P.L.R. 1915; 39 P.W.R. 1915; 28 I.C. 375.

——Post diem—Rate—Contract rate if can be allowed, *See* Bai Bil, Wafa.

90 P.L.R. 1914; 107 P.W.R. 1914: 22 I.C. 680.

——Post diem—Mortgage—For period after suit—Discretion. *See* Mortgage—Interest.

131 P.W.R. 1915; 52 P.L.R. 1915: 27 I.C. 616.

——Post diem—Mortgage for four years. *See* Guardian and Wards Act, S. 30.

24 P.R. 1916; 34 I.C. 916.

——Rate of—12 Per cent if excessive—Interest at 12 per cent, per annum is not excessive.

192 P.L.R. 1912; 165 P.W.R. 1912; 17 I.C. 235.

INTEREST ACT, (XXXII OF 1839), S 1.

— *Interest Acts, 1839 and 1855—Written demand—Implied agreement —Damages.*

In the absence of agreement or usage giving a right to interest, and of a written demand giving notice that interest would be claimed, the creditor is not entitled to interest.

In the case of actions for debt in which the requirements of the Act XXXII of 1839 are not satisfied, interest cannot be awarded as damages. 20 Mad., 481 ; 73 P. R, 1892 ; 36 P. R, 1894, *referred to* (Robertson and Harris, JJ.)

Bura *v.* Mailia Shah.—104 P.R 1901 ; 19 P.L.R. 1902.

— *S. 1—Notice of intention to claim interest—Demand of interest already due.*

Under interest Act 1839 a creditor has the option of notifying to his debtor the date from which interest will be claimed and failure to give such notice deprives the creditor of the interest to which he might, with due diligence, have established a claim. A letter demanding interest on an outstanding debt, from which the intention of the creditor to claim interest up to date of payment is made clear, is a sufficient notice, within the meaning of the Interest Act, 1839, to entitle the creditor to claim interest prospectively from the date of the letter, though the demand be made retrospectively in respect of interest alleged to be then already due. 23 Mad. p. 41, *concurred.* (Reid and Robertson, JJ.)

Sita Ram *v. Mst.* Sullivan.—181 P.L.R 1901.

— *S 1—Terms printed on vouchers and bills as to interest—Implied agreement—Discretion of Court—Revision.*

Where the order forms for articles supplied by a trader were headed with the printed words 'Terms one month's credit, interest at 12 per cent. charged on expiry' and bills were also headed similarily, *held*, that no inference could be drawn from them that the debtor contracted to pay interest.

In considering the fitness of allowing interest, Courts in this country exercise the functions of jurors, and discretion is vested in courts which should not be interferred on revision except in cases in which there has been an abuse of the discretion. (Reid, J.)

Edulji & Co. *v.* Mcdonald.—55 P.R. 1901.

— S. 1—Settlement of claim—No interest mentioned or demanded before suit—Whether entitled. *See* T. P. Act., S. 55.

39 P.R. 1913 ; 20 I.C. 299 ; 263 P.L.R. 1913.

— *S. 1—Unpaid price of goods—Printed head lines in bill—Demand.*

Interest is not allowed upon the unpaid price of goods sold unless demand has been made for the arrears. A printed head line in the tradesman's bill that interest would be charged on all arrears after a certain period is not such a demand as is contemplated by the Interest Act. (Agnew and Shadi Lal, JJ.)

Fillaugham *v.* Dunn.—8 P.R. 1914 ; 266 P.L.R 1913 ; 20 I.C. 194.

INTERPRETATION—BAR OF SUIT.

——Bar of Suit—Provisions—To be strictly interpreted in favour of a suit. *See* Civil Procedure Code, S. 11.

142 P.W.R. 1916 ; 48 P.R. 1916 ; 34 I.C. 581.

——*Creation of right and remedy—Principle of no other remedy, if applicable where right is not created by the statute.*

Where the right in question is not created by the statute but exists independently of it, the rule that where a statute creates a right and provides at the same time a remedy, that remedy and no other is available is not applicable. (Shadi Lal and Broadway, JJ.)

Duni Chand *v.* Muhammad Hussain.—22 P.R. 1917 ; 14 P.W.R. 1917 ; 40 I.C. 220.

——Fiscal enactments—Canon of Construction—Strict construction so as to bear less heavily on subject. *See* Court Fees Act, S. 7 Cl. 4.

228 P.W.R. 1913; 111 P.R. 1913; 23 P.L.R. 1914; 22 I.C. 503.

——Fiscal enactment—Imposition of burden on subject—Strict construction. *See* Stamp Act, S. 2 (15).

29 P.R. 1915; 29 P.L.R. 1916; 27 I.C. 489.

——Fiscal enactment—Stamp Act—To be rigorously construed in favour of the public whenever any ambiguity arises.

Sesh Rostonji *v.* Emperor.—1 P.W.R. 1918 : 151 P.L.R. 1917 ; 115 P.R. 1918 ; 44 I.C. 261 (S.B.)

——Fiscal enactment—Court Fees Act to be strictly construed—If copy of general power of attorney filed in Court requires Court fees stamp of 8 annas under Art, 8, Sch. I of the Court-Fees Act. *See* Court Fees Act, Sch. I Art 8.

9 P.R. 1918 ; 136 P.W.R. 1917 ; 43 I.C. 383.

—— Harmonious construction of all the parts of a statute together—Not of one part only by itself—Words plainest—True meaning is that which best harmonises with the subject and with every other passage. *See* Companies Act, (VII of 1913), Ss. 3 and 284.

35 P.L.R. 1916 ; 20 P.R. 1915 ; 29 I.C. 272.

——Harmonious construction parts of statute to be read together though words of particular part clear. *See* Companies Act, (VII of 1913), S. 3 and 284.

20 P.R. 1915; 35 P.L.R. 1916; 29 I.C. 272.

—— History of the enactment when to be restored to—Clear terms to be given plain meaning—Absolute *sententia expositors non eget*. *See* Court Fees Act, S. 7, Cl. IV (c).

228 P.W.R. 1913; 111 P.R. 1913; 23 P.L.R. 1914; 22 I.C. 503.

——Illustration and section—Conflict between—Illustration to section not binding on section. *See* Penal Code, Ss. 109, 122 (b) and 302.

17 P.R. 1915 Cr.; 246 P.L.R. 1915; 11 P.W.R. 1915 Cr.; 28 I.C. 738.

——Intention if material—Courts to follow the wording of an enactment without regard to intention. *See* Statutes— Evidence as to Intention.

35 P.L.R. 1915; 5 P.R. 1912 Rev. ; 17 I.C. 979.

INTERPRETATION—LIMITATION ACT.

——*Limitation Act—Strict construction.*

Held, that the statues of limitation must be strictly construed and that no man is to be deprived of rights which would by law belong to him unless the specific provisions of law which are alleged to take away those rights can be shown to apply clearly and in precise terms to his case, 56 P. R 1903 at p. 259 s c 93 P L.R 1903 at p. 389, *referred to.* It is a well recognised principle of law, that possession cannot be adverse against a person who has not either on his own account or through his predecessor in title an immediate right to possession. I L R. 4 Cal. 327; 27 Bom. 51, *referred to.* (Reid, C.J. Kensington and Rattigan, JJ.)

Sundar *v.* Salig Ram —34 P.L.R. 1911; 33 P W R. 19.1; 26 P.R. 1911; 9 I.C. 300.

—— *Marginal note, value of.*

The marginal note to a section cannot be relied upon in clearing up the ambiguity in the text of the written law but it may with advantage be referred to when it confirms the conclusion warranted by the language of the section. (Rattigan and Shadi Lal, JJ.)

Lahore Bank *v.* Kidar Nath—36 P.R. 1916 ; 45 P.L.R. 1916 ; 4 P. W. R. 1916 ; 31 I.C. 746.

——*Procedure Law—Retrospective effect—Right of appeal is a vested right.*

Acts of the Legislature, which regulate procedure, though in general retrospective in their effect, must not be interpreted so as to affect prejudicially the vested rights of the parties to suit. 13 I. C. 264; 5 I. C. 420, *distinguished.*

A right of appeal which has accured is such a vested right.

The tribunal competent to dispose of appeals instituted before a new Act come into force, but still pending when it come into force, is the tribunal which would have been competent to dispose of them, if the appeals had been instituted after the said new Act came into force. 35 P. R. 1915, *followed.* (Johnstone, O.J.)

Asa Ram *v.* Budhu Mal.—88 P.R. 1916; 132 P.L.R. 1916; 43 P.W.R. 1916; 35 I.C. 67.

—— Punctution—Superfluous. *See* Divorce Act, S. (3) (1).

171 P L R. 1911; 122 P.W.R. 1911; 47 P.R. 1911; 10 I.C. 467.

—— Repealing Act—Not to affect vested rights. *See* Punjab Courts Act (III of 1914), Ss. 24, 35 and 41.

42 P.L.R. 1915; 25 P.W.R. 1915; 30 P.R. 1915; 27 I.C. 625.

——*Repealed statute—Statute creating offence—Repeal—Subsequent conviction for that offence—Legality—Offence committed before repeal—Effect.*

Where an Act creating an offence is repealed a person cannot be convicted of that offence though it was committed before the repeal of the Act. (Chevis, J.)

Ram Ruchpal *v.* Emperor.—41 P.W.R. 1917 Cr. ; 41 I.C. 1003.

INTERPRETATION—RETROSPECTIVE EFFECT.

—*Retrospective effect—Procedure—Alteration in.*

Generally the procedure clauses of an Act carry retrospective effect unless such a construction affects a right vested in the parties under the old Act. (Rattigan and Williams, JJ.)

Nihal Devi *v.* Kishore Chand —97 P.R. 1910; 11 P.L.R. 1911; 142 P.W.R. 1910; 8 I.C. 999.

—*Retrospective operation of statute.*

A legislative enactment is prospective and not retrospective in its operation, except (*i*) when the Act only affects the procedure of the Court, and (*ii*) when intention of the Legislature is clearly to give it a retrospective effect. (Scott Smith and Shadi Lal, JJ.)

Karar Hassan *v.* Mustafa Hassan.—233 P.L.R. 1915; 86 P.R. 1914; 26 I.C. 743.

—Retrospective operation—Acts Regulating procedure—Generally retrospective—Vested right not to be prejudicially affected—Right of appeal—Vested right cannot be affected. *See* Punjab Courts Act, Ss. 24, 38 and 48.

25 P W.R. 1915; 42 P L R. 1915; 30 P.R 1915; 27 I.C. 625.

—Retrospective operation—Criminal offence—Presumption against. *See* Colonisation of Government Lands.

26 P.R. 1913 Cr.; 15 Cr.L.J. 146; 33 P.W.R. 1914 Cr.; 91 P.L.R. 1915; 22 I.C. 722.

—Sale by some co-sharers of house during minority of others suit by them for possession—Delay—Compensation for improvements. *See* Transfer of Property Act, S. 51.

247 P.W.R. 1915; 54 P.L.R. 1915; 23 I.C. 350.

—*Special and general Statutes—Rule of construction.*

A general statute must yield to a special Act applicable to a particular locality. A general statue is presumed to have general cases only in view and not particular cases which have already otherwise been provided for by a special or a local Act (Shadi Lal, C.J. and Abdul Qadir, J.)

Siba Singh *v.* Sundar Singh.—3 Lah. L.J. 522.

—*Statement of objects and reasons—If to be referred to.*

The rule of interpretation of statues is that where the wording of an Act is absolutely clear and unambiguous, a Court cannot look to the statement of objects and reasons of the Act or try to discover whether the words used mean something above and beyond what they clearly say. (Harrison, J.)

Rup Kishore *v.* Bhagat Govind Das.—(1922) Lah. 211.

—*Taxing enactment—Strict construction.*

It is a sound principle that the subject is not to be taxed without clear words to that effect; and in dubio, you are always to lean against the constuction which imposes a burden on the subject. (Shadi Lal, C.J. Scott Smith, Broadway, Abdul Raoof and Martineau, JJ.)

Sunder Das *v.* Collector of Gujrat.—3 Lah. 349 (F.B.)

INTERPRETATION.

——Technical and popular meaning of words. *See* Court Fees Act, Schedule II, Art. 10

108 P.W.R. 1912; 202 P.L.R. 1912; 15 I.C. 122.

——Words—Definition of words—Should not be stretched to cover other words. *See* Punjab Tenancy Act, S. 59 (1) (a).

30 P.W.R. 1913; 71 P.L.R. 1913; 2 P.R. 1913; 19 I.C. 40 (F.B.)

INTERPRETATION OF STATUTES.

——*Bye-law—Must conform with Statute and must be reasonable.*

A bye-law must conform with the provisions of the enactment under which is purports to be made. A bye-law which is unreasonable is *ultra vires*. (Abdul Qadir, J.)

Joti Pershad *v.* Emperor.—2 Lah. 239; 64 I.C. 129.

——*Punjab Alienation of Land Act.*

Provisions, which trench on the usual jurisdiction of a Civil Court to execute its decree or order, must be strictly construed. Although agricultural land is exempt under the Punjab Alienation of Land Act, yet an Insolvency Court is competent to proceed against such land by means of a temporary alienation. (Shadi Lal, C. J. and Wilberforce, J.)

Manji *v.* Gridhan Lal—2 Lah. 78; 61 I.C. 664.

INVENTORY.

——No prejudice—Criminal Procedure Code, S. 145—No preliminary order—No copy fixed—Other remedy open—Revision—Practice. *See* Criminal Procedure Code, S. 145.

15 P.W.R. 1914 Cr.; 68 P.L.R. 1914; 15 Cr.L.J. 279; 23 I.C. 487.

JOINT FAMILY *See* also HINDU LAW—J. F.

——*Muhammadan—No presumption of joint funds—Second appeal—Concurrent findings of fact—Power of High Court to interfere—Findings not based on evidence.*

In a Muhammadan joint family there is no presumption as to the jointness of funds, and in this connection Hindu and Muhammadan joint families are quite different. The rule that the High Court will not interfere to upset concurrent findings of fact is inapplicable to a case where the findings are not based on evidence, but on a wrong presumption. (Johnstone and Scott Smith, JJ.)

Imam Din *v.* Dalo.—239 P.L.R. 1914; 144 P.W.R. 1914; 25 I.C. 278.

JOINT PROPERTY.

——*Joint ownership of plot of land—Entries in books of Hardwar priests.*

Entries in the books of Hardwar priests, if proved to have been made *ante litem motam*, would be of great value in establishing a pedigree-table. (Johnstone and Shadi Lal, JJ.)

Ram Singh *v.* Donlat Singh.—171 P.L.R. 1914; 97 P.W.R. 1914; 23 I.C. 550.

——Suit for shares in—Death of one respondent—Legal representative not brought on record—Abatement—Whether suit can proceed against others. *See* Criminal Procedure Code, O. 22 R. 4 (3).

16 P.W.R. 1914; 41 P.R. 1915; 15 P.L.R. 1914; 21 I.C. 951.

JUDGMENT.

——*Contests of—Not to be based on evidence not on record.*

Documents which are neither produced nor proved nor admitted in evidence, should not be considered in the judgment, though they may have been produced in another case between the same parties. (Shah Din and Scott Smith, JJ.)

Bibi Patti *v.* Jawala Devi.—7 P.L.R. 1912 (Supp.): 126 P.W.R. 1912; 16 I.C. 488.

——Contests of—Evidence not considered—Liable to be set aside in revision. *See* Criminal Procedure Code, O. 41, R. 31.

4 P.W.R. 1915; 36 P.L.R. 1915; 27 I.C. 561.

——Damaging remarks against witness—Expunging remarks in judgment. *See* Witness.

12 P.W.R 1911 Cr.; 193 P.L.R. 1911; 12 Cr. L.J. 393; 11 I.C. 577.

JURISDICTION—APPEAL.

——*Appeal—Forum—Decree for redemption on payment of a sum below Rs. 5,000—Appellate decree on payment of a sum exceeding Rs. 5,000.*

Held, that where, in an appeal against a decree for redemption on payment of a certain sum, the whole decree is sought to be set aside, the memorandum of appeal should bear *ad valorem* Court-fee on the amount, on payment of which redemption is decreed. 44 P.R. 1888; 5 P.R 1911; 9 Ind. Cas 676; 59 P.W.R. 1911, *followed*.

A suit for redemption was filed in the Court of a Subordinate, Judge, having civil jurisdiction with pecuniary limits. The plaint prayed for redemption on payment of Rs. 400. The Subordinate Judge gave a decree for redemption on payment of Rs. 3770. From this decree, both sides appealed to the Divisional Court which decreed redemption on payment of Rs. 14,000.

Held, further, that the Divisional Judge had jurisdiction to entertain the appeal when first presented and to pass a decree for redemption on payment of a sum exceeding five thousand rupees. 106 P.R. 1895, *followed*. 16 P.R. 1908; 13 P.W.R 1907, *distinguished*.

A mortgaged certain land to B. B was already in possession of the land as a tenant and had made considerable improvements during the period of his tenancy. When A sued for redemption, B pleaded that he could not be ousted before he was awarded compensation for the improvements effected during the term of his tenancy. There was no clause in the mortgage-deed providing for payment of compensation to the mortgagee in the form of value of the improvement before redemption.

Held, that the Civil Court had no jurisdiction to entertain the plea of B as regards his rights in respect of the improvements effected under the conditions of B's tenancy The mortgagor was entitled to redeem what was mortgaged and to be put in the same position as regards the mortgagee *qua* the mortgage as he was at the time when he had entered into the mortgage. If the mortgagee had any rights under the conditions of his tenancy and could claim to retain possession as a tenant until paid full compensation for the trees, he could plead that when the mortgagor sought possession through the agency

JURISDICTION—APPEAL.

of the Revenue Courts, or, if he had any claim which he could affirmatively urge before a Revenue Court, he could sue in the Revenue Court. 76 P.R. ; 119 P.W.R. 1909 ; 3 Ind. Cas. 498, *referred to*. 98 P.R 1886; 169 P R. 1888: 91 P.R. 1889: 63 P.R. 1891; 40 P.R. 1892 ; 101 P.R. 1900 ; 58 P.R. 1902 ; 24 P.R. 1906 ; 46 P R. 1906; 62 P.W.R. 1906; 19 P.R. 1908 ; 38 P.W.R. 1908 ; 69 P.R. 1908 ; 125 P.W.R. 1908 ; 23 C. 536 ; 38 A. 639 ; 12 Ind. Cas. 464, *distinguished*. (Robertson and Shah Din, JJ.)

Dyal Singh v. Ram Rakha.—54 P.R. 1912; 122 P.W.R 1912; 14 I.C. 78.

—— *Appeal—Forum—First appeal—Punjab Courts Acts, Ss. 39 and 40.*

The question of jurisdiction in respect of a first appeal must be determined with reference to the claim made, and not with reference to the decision upon the claim.

There is a distinction between first appeals under S. 49 and further appeals under S. 40 of the Punjab Courts Act (Kensington and Beadon, JJ.)

Allah Bakhsh v. Ram Lal —16 I.C. 865 ; 274 P.W.R. 1912; 3 P.L.R. 1913.

—— *Appeal—Forum—Valuation of suit—Pre-emption suit.*

Held, that for purposes of determining the course of appeal in a pre-emption suit, the value for purposes of jurisdiction must only be looked at, and not the amount which the pre-emptors may have to pay. (Kensington and Chevis, JJ.)

225 P.L.R. 1912 ; 201 P.W.R. 1912 ; 15 I.C. 407.

—— *Chief Court, in revision.*

Held, that the Chief Court should not ordinarily interfere on revision side in cases Act XIX of 1841, but where an erroneous order has plainly been passed, likely seriously to prejudice a party, and likely to cause serious embarassment and difficulty in the future, intervention is right and proper. (Johnstone, J.)

Ghurku Mal *v. Mst.* Durga Devi.—65 P.L.R. 1911; 223 P.W.R. 1911; 10 I.C. 820.

—— Civil Court—Abadi land—Suit for possession. *See* Limitation Act, Art. 142.

106 P.W.R. 1914; 204 P.L.R. 1914; 25 I.C. 82.

—— *Civil Court—Declaration suit for, that plaintiff had muqarraridari rights in land.*

The plaintiff sued for a declaration that he had *muqarraridari* rights in the Shamilat of a village created by deeds executed by or on behalf of the proprietary body who owned the shamilat. *Held*, (1) that the suit was cognizable by Civil Court. (2) that the deeds constituted perpetual lease and not being registered were not admissible in evidence. (3) that the deeds could not bind those owners who did not join in is execution and that suits must be dismissed. (Shah Din and Kensington, JJ.)

Jandad Khan *v.* Abbas Khan.—189 P.L R. 1908.

JURISDICTION—CIVIL COURT.

——*Civil Court—Declaration—Suit for declaration that the defendant is not the lawful wife of the plaintiff—Effect of order under section 488, Criminal Procedure Code.*

Where an order has been passed under section 488, Criminal Procedure Code awarding maintenance to wife against the plaintiff, *Held*, that a Civil Court has no jurisdiction to pass a decree that the wife was not entitled to receive maintenance; but it is competent to decide whether she was or was not the lawful wife of the plaintiff. (Chatteji and Maude, JJ.)

Waryam Singh *v.* Premon.—50 P.R. 1901; 158 P.L.R. 1901.

——Civil Court—Document presented to registrar for registration after the prescribed period—Refusal by Registrar—Whether Civil Court can interfere. *See* Registration Act, Ss. 23 and 77.

39 P.R. 1917; 64 and 123 P.L.R. 1917; 112 P.W.R. 1917; 41 I.C. 64.

——*Civil Court—Ejectment—Allegation that occupancy tenancy had ceased.*

In a suit for possession, the plaintiff alleged in the plaint that the defendants were formerly occupancy tenants, but that they had nothing whatever to do with the land now :

Held, that the suit was clearly one for ejectment of a trespasser, and therefore, cognizable by a Civil Court and that previous suit between the parties for cancellation of notice of ejectment in the Revenue Courts could not bar the present suit by the rule of *res judicata*. (Reid, C. J. and Chevis, J.)

Jaman *v.* Chandiya Ram.—69 P.W.R. 1913; 196 P.L.R. 1913; 18 I.C. 918.

—*Civil Court—Mortgage with possession—Suit for possession.*

Where a mortgage recital relates that possession is given to the mortgagee, and the mortgagor undertakes to collect produce from tenants in possession, a suit for possession by the mortgagee is cognizable by a civil court. (Johnstone and Rattigan, JJ.)

Ahmad Khan *v.* Rattan Chand.—100 P.L.R. 1912; 50 P.R. 1912; 53 P.W.R. 1912; 13 I.C. 539.

——*Civil Court—Public Road—Obstruction to—Special damage.*

It was admitted in this case that the plaintiff purchased a *tavela* from the defendant about 25 years before suit and that within two years of suit the defendant obstructed a way which had in the interval been used continuously by the plaintiff and others having business with him, as the direct way to the *tavela*, and that the only alternative way was circuitous way and practically impassable for carts in wet weather. *Held*, that upon the above facts a suit was maintainable in the Civil Court to remove the obstruction, the value of the *tavela* having been diminished by the obstruction, access thereto being necessary for the profitable enjoyment thereof. In order to entitle a plaintiff to maintain an action to remove an obstruction from a public way, he must show a special damage suffered by himself over

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and above that suffered by the public L.R II Ex. 316, 34 L J.Q. B. 257, 14 Mad. 177, 9 All. 434, 10 Bom. 390, *referred to.* (Reid, J.)

Jowanda Singh *v.* Sardar Indar Singh.—64 P.R. 1901 ; 103 P L R. 1901.

—— *Civil Court—Reversioner's suit that last owner had no right to alienate by granting occupancy rights—Limitation Act, Art. 144*

Held, that a suit, brought in 1909 by the reversioners of a deceased sonless proprietor C who died in 1879, and who had given occupancy rights in one plot of land in 1864, and in another in 1872 to G. on the ground that C. had no right to alienate the land in that way, is cognizable by a Civil Court ; but was barred by Limitation under Article 144 of Act IX of 1908 as G had enjoyed the occupancy rights adversely to plaintiffs from the date of C's. death. (Shah Din and Scott Smith, JJ.)

Badhaw *v.* Jallu.—228 P.L.R. 1914 ; 112 P.W.R 1914 : 25 I.C. 871.

— *Civil Court—Shamilat land—Partition—Land left joint as a road—Obstruction by one of the co-sharers—Cause of action—Special damage not necessary to prove.*

At the time of partition of common land of a *patti* land in suit was left joint to serve as a road—Upon defendants attempting to close the way the plaintiffs, who were co-sharers in the *patti*, sued the defendants, who were also co-sharers, for a permanent injunction to restrain them. The Divisional Judge, on appeal, dismissed the suit on the ground that no special damage having been proved by the plaintiffs, the suit was not maintainable.

Held, that the order of dismissal was wrong. It must be held that the land was not a public road and that the suit was one by certain co-sharers to restrain other co-sharers in joint property from using that property in contravention of agreement regarding it in defiance of the objections of the plaintiffs. 134 P.R. 1882, 39 P.R. 1888, 4 P.R. 1895, *referred to.* (Johnstone, J.)

Imam Din *v* Kishen Singh.—218 P.L.R. 1910 ; 8 I.C. 1048.

——CIVIL AND REVENUE COURTS.

—— Civil and Revenue Courts—Agricultural land—Agreement to partition. *See* Punjab Land Revenue Act, S. 158 (2).

46 P.L.R. 1914 ; 22 I.C. 321 ; 55 P.W.R. 1914.

— *Civil and Revenue Court—Case party cognizable by Civil Court and partly by Revenue Court.*

If a claim is cognizable partly by a Civil Court and partly by a Revenue Court and is lodged in a Civil Court, that Court must adjudicate on so much of the claim as is cognizable by itself, treating the rest of the claim as surplusage, and leaving it to the plaintiff, if so advised, to bring a fresh suit in the Revenue Court as regards so much of the claim as is cognizable by that Court. (Chevis, J.)

Mathra Das *v* Hukim Singh.—247 P.L.R. 1912 ; 261 P.W.R 1912 ; 16 I.C. 752.

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—*Civil and Revenue Courts—Claim for dues by a Saqqa (water carrier) of village against the proprietary body based on* Wajib-ul-arz *cognizable by a Civil Court.*

A suit by a village *saqqa* (water carrier) against some of the proprietary body to recover from them his dues on the ground that according to the terms of the *Wajib-ul-arz* he is entitled as *saqqa* of the village to certain specified dues in return for his doing the work of a water carrier at marriages and at the camps of officers on tour, is cognizable by a Civil and not a Revenue Court. (Broadway, J.)

Azim *v.* Gopi.—74 P.R. 1917; 44 P.W.R. 1917; 40 I.C. 487.

—*Civil or Revenue Courts—Claim that plaintiff has acquired occupancy rights by adverse possession—Punjab Tenancy Act, 77 (3) (d).*

A claim that the plaintiff has acquired occupancy rights by more than 12 years possession coupled with assertion of occupancy rights adversely to the owners falls within the purview of S. 77 (3) (b) of the Punjab Tenancy Act and is not cognizable by a Civil Court. (Broadway and Abdul Raoof, JJ.)

Bishen Singh *v.* Jaffar.—159 P.R. 1919; 54 I.C. 911.

—*Civil and Revenue Courts—Declaration—Suit by widow for a declaration to have a joint holding partitioned—Punjab Land Revenue Act, S. 158.*

Where an application by a widow of a co-sharer to the revenue authorities for partitioning a joint holding was refused and she subsequently brought a suit for declaration in a Civil Court that she was entitled as the widow of the deceased co-sharer to have the land jointly held by her and defendants partitioned. *Held*, that the jurisdiction of Civil Court to entertain and try a suit was not barred under section 158 (2) (17) of the Punjab Land Revenue Act. That Civil Court could merely decide whether or not plaintiff had a legal right to claim partition; and that it will be a question solely for the revenue authorities to decide thereafter, if such decision became necessary whether partition should or should not be allowed. (Kattigan, C.J.)

Mst. Diali *v.* Kala Singh.—7 P.R. 1919; 123 P.W.R. 1918; 46 I.C. 11.

—Civil and Revenue Courts—Declaration—Suit for declaration that certain partition of common land effected by the revenue authorities is invalid against plaintiff. *See* Punjab Land Revenue Act, 17 of 1887, Ss. 116 and 117.

12 P.R. 1919.

—*Civil and Revenue Courts—Declaratory suit that the kamiana dues were not payable by plaintiffs.*

The plaintiffs sued for a declaratory decree to the effect that *kamiana* dues are recoverable only from the *kamins* who construct houses on the sites belonging to proprietors and get benefit from pasturage and *shamilat* lands, and that the plaintiffs who were the

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owners of their houses and cultivators were not liable to pay the said dues. *Held*, that the suit was cognizable by Civil Court. (Clark, C.J.)

Sheik Muhammad v. Habib Khan.—67 P.R. 1905; 113 P.L.R. 1905.

—— *Civil and Revenue Courts—Duty of Court to try the question of jurisdiction before deciding the suit on merits.*

Held, that if a Court has no jurisdiction its proceedings are *coram non judice* and no question either of Law or fact can be decided except that of jurisdiction.

So where the defendant pleaded the Court had no jurisdiction to hear the case but the Court, without disposing of this plea, dismissed the suit as barred by limitation :

Held, that, the Court was bound to determine 1st of all that it had jurisdiction and then could proceed further. (Reid, C.J.)

Abdul Haq v. Niaz Ahmad —83 P R. 1910; 82 P L R. 1910; 104 P.W.R. 1910; 7 I.C. 718.

—— *Civil or Revenue Court—Ejectment suit—Plaintiff alleging forcible dispossession—Test—Examination of plaintiff—Defendant proving to be a tenant—Practice—Dismissal of suit.*

A suit to evict defendant from land of which he is alleged to have taken forcible possession from plaintiff is cognizable by a Civil Court.

In ascertaining whether a suit is cognizable by a Civil or by a Revenue Court, it is not enough merely to look at the plaint.

The real test in such cases is to examine the plaintiff, and see whether according to the plaintiff, the defendant took the land from plaintiff in the first instance for cultivation, or whether the defendant got possession in the first place by force.

If, on inquiry, the Civil Court finds that the defendant is, as a matter of fact, a tenant and not a trespasser, the Civil Court should dismiss the suit. (Chevis, J.)

Bela Singh v. Labh Singh.—48 P.W.R. 1912; 51 P.L.R. 1912; 13 I.C. 298.

—— Civil and Revenue Courts—Ejectment—Person ejected from tenancy under section 43 of the Punjab Tenancy Act—Suit for possession in Civil Court—Maintainability. *See* Punjab Tenancy Act, Ss. 45, 77 (3) (b).

49 P.R. 1919.

—— *Civil or Revenue Court—Injunction, suit for restraining defendant from building on occupancy land.*

Held, that a suit falling within the purview of section 77 (3) of the Punjab Tenancy Act must be heard by a Revenue Court whether or not, so far as the form of the suit or the particular remedy prayed for is concerned, it also comes within any of the provisions of the Specific Relief Act, I of 1877; 73 P.R. 1910; 103 P.W.R. 1910; 7 Indian Cases 717; *dissented from*, 89 P R. 1895; Rev. 2 P.R. 1913; 3 P.W.R. 1913 Rev. ; 18 Ind. Cas. 786. *referred to.*

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Therefore a suit for a perpetual injunction that the defendant being plaintiff occupancy tenants, be prohibited from building houses on land forming part of the occupancy tenancy is cognizable by a Revenue Court only. (Johnstone, C.J. and Chevis and Shadi Lal, JJ.)

Ibrahim *v.* Akbar—58 P.L.R. 1917 ; 104 P.W.R. 1916; 34 I.C. 209.

—*Civil or Revenue Court—Joint possession—Suit for joint possession is owner of shamilat land—Originally a muafi of lambardar.*

A suit for joint possession of *shamilat* land made over to the defendant as *ala lambardar* and in *muafi*, the *ala lambardari* and *muafi* having come to an end without touching the question of defendant's title to occupancy right, is cognisable by the Civil Court. 101 P. R. 1901 (F. B.) 15 P.L R. 1901, *distinguished.*

All questions of title of occupancy rights in the land are quite outside the case so framed.

A man cannot be allowed to plead in the same case that he is an owner by adverse possession against a plaintiff and that he is a tenant by contract under that plaintiff. (Johnstone, J.)

Shamir Khan *v. Mst.* Ghulam Fatima.—44 P.R. 1915; 5 P.L.R. 1916. 100 P.W.R. 1915 ; 29 I.C. 655.

—*Civil and Revenue Court—Lambardar—Suit by—Against Malikan-i-quabza for value of tree.*

Held, that a suit by a *lambardar* against *Malikan-i-quabza* for value of tree out by the latter standing on land in their possession is triable by a Civil and not a Revenue Court.

The mere fact the lower Court has in its judgment noted a decision of the Chief Court as governing the case is not a material irregularity if the decision is not applicable to the case. (Scott Smith, J.)

Nasib Singh *v.* Harnam Singh.—18 P.L.R. 1915; 242 P.W.R. 1915; 28 I.C. 919.

—*Civil or Revenue Court—Landlord and tenant—Suit by a landlord against an occupancy tenant to recover damages on account of latter failing to cultivate land without sufficient cause—Civil nature—Suit for ejectment for not cultivating the land cognisable by Revenue Court—Ss. 14, 77 and 39 Punjab Tenancy, Act.*

A suit brought by a landlord against his occupancy tenant on the allegation that the defendant who pays to plaintiff rent in kinds has, without sufficient cause, failed to cultivate a part of the land comprised in his tenancy and that consequently plaintiff is entitled to recover damages assessed according to the amount of the produce rent, which the plaintiff would have received from the defendant if the land in question had been cultivated, is of a civil nature, as it does not come within the purview of any of the provisions either of S. 14 or S. 77, Punjab Tenancy Act.

OBITER—But a suit for ejectment of such a tenant on account of his failing to cultivate without sufficient cause as laid down in clause (b) of S. 39 of the said Act falls within S. 77

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Sub-Section (3) clause (e) and is therefore cognizable by a Revenue Court. (Shah Din, J.)

Ram Singh *v.* Roda.—99 P.L.R. 1917; 90 P.W.R. 1917; 42 I.C. 279.

— *Civil and Revenue Courts—Landlord and Tenant—Suit on bond for arrers of rent.*

A suit for recovery of money due on a bond, the consideration for which is arears of rent is cognizable by Civil Court and not by Revenue Court. (Chatterji, J.)

Gopal Sahai *v.* Jassa.—99 P.L.R. 1906.

— *Civil and Revenue Courts—Landlord and tenant—Punjab Tenancy Act (XVI of 1887), Ss. 14, 77 (3) (u).*

The plaintiff, an occupancy tenant, sued the defendant for damages for preventing him from cultivating land of his holding. It was not alleged that the defendant had been in possession of the land or had occupied it.

Held, that the suit was triable by the Civil Court. (Johnstone, J.)

Miran Bakhsh *v.* Ghanaya.—114 P.L.R. 1908.

— *Civil and Revenue Court—Mortgage by way of conditional sale—Mortgaged land allowed to remain with mortgagor as tenant—Landlord and Tenant—Suit for ejectment dismissed by Revenue Court on the erroneous ground that relationship of landlord and tenant did not exist between the parties—Suit in the Civil Court for possession not maintainable—Revenue Court—Punjab Tenancy Act (XVI of 1887), Section 100—Registration of decree of Civil Court in the Revenue Court.*

The mortgagees sued in the Revenue Court as landlords for ejectment of the mortgagors as tenants. On revision the Financial Commissioner dismissed the suit on the ground that relationship of landlord and tenant did not exist between the parties. They then filed the present suit in the Civil Court for possession as mortgagees. The mortgage-deeds provided that the mortgaged land shall remain in possession of the mortgagees but cultivating possession thereof shall be retained by the mortgagors, that in lieu of interest the mortgagors shall pay *munafa* to the mortgagees and that the mortgage-debt shall shall be paid within the period stipulated in the deeds and in case of default the land shall be considered as absolutely sold.

Held, that the mortgage-deeds created the relationship of landlord and tenant between the parties and consequently the Civil Court was not competent to entertain the suit.

(2) That the decision of the Financial Commissioner on the point was erroneous.

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(3) That it was doubtful whether provisions of section 109 (2) (3) of the Punjab Tenancy Act were applicable to the case, and that even if there were no order should be passed under the section. That it was open to the mortgagees to apply to the Financial Commissioner for review of his order dismissing the suit. 46 P.R 1894 (Full Bench,) *referred to.* (Chevis and Shah Din, JJ.)

Chokha *v.* Fateh Muhammad.—150 P.L.R. 1910; 110 P.W.R. 1910; 7 I.C. 1001.

——*Civil and Revenue Courts—Mortgage of revenue paying land with possession—Mortgage to receive malikana by way of interest at a certain rate within fixed time or to get actual possession in case of default—Relation of landlord and Tenant not thus created.*

Held, that, where a mortgage of revenue paying land is with possession, but the mortgagee is to charge interest at a certain rate on the mortgage money and leaves the mortgagor to occupy the in consideration of receiving, within a fixed time, a lump sum, as *malikana*, calculated at that rate, and the mortgagor agrees to pay interest at an enhanced rate if he fails to pay the *malikana* regularly, and, in case of making default in payment of the interest, further, allows the mortgagee either to eject him to take a share of the produce by division or to realize rent as *Chakota*, the relation of landlord and tenant is not thereby created between the mortgagee and the mortgagor, and an ejectment suit of this nature does not fall within the jurisdiction of a Revenue Court.

Held, also, that limitation of twelve years for obtaining possession of the land in dispute prescribed under Art. 135 of Act XV of 1877 began to run from the date of making default in payment of the *malikana* or interest (Robertson and Shah Din, JJ.)

Nathan Singh *v.* Mina Mal.—17 P.W.R 1908.

——*Civil and Revenue Courts—Mortgage with possession—Deed proceeding mortgagor to hold land* mijnit woba Ijazat *and also for payment of legal revenue—Suit.*

In this case the plaintiffs sued as mortgagee-landlords to eject the defendants as mortgagor-tenants because the defendants failed to pay rent. In the mortgage deed the transaction was described as a mortgage with possession, and it also provided for the mortgagor holding the land *under munjamb wabaijazat* the mortgagees, and for the payment of rent (*lagan*) by the former to the latter.

Held, the relationship between the parties was one of landlord and tenant as defined in Ss. 4 (5) and (6) of the Act, and the suit was rightly brought in the Revenue Court. (Penton, F. C.)

Kishore Chand *v.* Bwadhawa Singh —82 P.L.R. 1914; 9 P.R. 1913 Rev.; 22 I.C. 656.

——*Civil and Revenue Court—Suit by mortgagee to recover income from one of his mortgagors on the basis of agreement to collect and pay.*

Held, that a suit lay the mortgage of revenue paying land for recovering from one of the representative of the original mortgagor its income on the ground that the latter agreed to pay

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it to the former after realizing its rents from the tenants is cognizable by a Civil and not a Revenue Court.

Held, also that the decree of the *Munsif* cannot be restored but the plaint should be returned to the plaintiff to present it in a Revenue Court inasmuch as the decree of the *Munsif* was reversed by the District Judge on the ground that the suit was cognizable by a Revenue Court and the decree given by the Assistant Collector was reversed by the Collector and that by registering the decree of the Collector in the Appellate Civil Court what the Chief Court can only do would leave the dissatisfied party no further remedy except a 2nd appeal to that Court in which the registered decree could not be challenged on a question of fact. (Chevis, J.)

Sardar Sher Singh *v.* Mazrulla.—124 P.L.R. 1917; 64 P.W.R 1917; 39 I.C. 617.

— *Civil and Revenue Courts—Occupancy right, claim to establish—Punjab Tenancy Act, S. 77 (3) (d).*

A claim to establish a right of occupancy by adverse possession falls within the purview of S. 77 (3) (*d*) of the Punjab Tenancy Act and no enquiry can be made into this question by the Civil Court. (Broadway and Abdul Raoof, JJ.)

Bishen Singh *v.* Jaffar.—69 P.W.R. 1921.

— *Civil or Revenue Court—Occupancy tenant—Suit by occupaacy tenants to recover their holding from the possession of their landlord.*

Held, that a suit by occupancy tenants to recover their holding from the possession of their landlords who are in reality cultivating the land as tenants at will on behalf of the occupancy tenants but are denying the existence of their occupancy rights is entertainable by a Civil and not a Revenue Court. (Johnstone, J.)

Amir Din *v* Megha —17 P.W.R. 1911; 9 I.C. 744.

— *Civil and Revenue Court—Partition—Abadi land.*

The Revenue authorities have no jurisdiction to effect to partition of *abadi* land though they have jurisdiction with respect a agricultural land. (Shadi Lal, C.J. and Leslie Jones, J.)

Manji *v.* Gulam Muhammad —2 Lah. 73; 61 I.C. 41.

— *Civil and Revenue Courts—Suit by occupancy tenant for share of price of trees against landlord.*

The plaintiff occupancy tenant, sued the defendant, landlord, for a share in the price of trees cut down and sold by the defendant from the land of the plaintiff's tenancy. *Held*, that the claim was cognizable by a Revenue Court under section 77 (3) (*i*) of the Punjab Tenancy Act. *Held*, also, that although the trees are the property of the landlord, the occupancy tenant has certain rights in the trees growing on his land, and a landlord cannot be allowed to wantonly cut down and sell any trees he likes contrary to the interests of his tenant. (Mortgomery, F.C.)

Ganga Ram *v.* Mahni.—9 P.R. 1904 Rev. ; 45 P.L.R 1905.

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——*Civil and Revenue Courts—Occupancy tenant—Ejectment by Revenue Court from land not included in the tenant's holding—Suit for recovery of possession by tenant*—Res-judicata.

The plaintiff took some land on lease from the defendants who sued for his ejectment in a Revenue Court and obtained a decree which included the land now in dispute. He was ejected in execution. In the present suit he alleged that the land in suit was included in the Revenue Court's decree by mistake and without his knowledge, and that it was not included in the land leased to him. He stated that he had become owner of the land by adverse possession and claimed its possession.

Held, that the suit was exclusively cogoizable by Civil Court, and that the decree of the Revenue Court was by reason of that Court's inability to entertain the present suit no bar under Section 13 of the Civil Procedure Code to the hearing of the present suit. (Clark, C.J. and Reid, J.)

Shib Dial *v. Mst.* Chiragh Bibi.—12 P.R. 1909; 124 P.L.R. 1908; 74 P.W R. 1908; 1 I.C. 321.

—— *Civil and Revenue Court—Occupancy tenant—Suit by—For declaration that* Shamilat *subject to grazing rights and not partitionable.*

Where, plaintiffs occupancy tenants in the village, objecting to a partition of the *shamilat* desired by the defendants, *maliks* brought a suit for declaration as to right of grazing over the whole *shamilat* area being kept intact for plaintiffs and all the residents of the village and that the land be kept exempt from partition.

Held, that the suit was cognizable by a Civil Court :

(i) Plaintiffs by asking that the land in suit be exempted from partition and their right of user of the whole of it be confirmed, raised a question of title and Section 158, Punjab Land Revenue Act, did not oust the jurisdiction of the Civil Courts :

(ii) (a) "that the words in S. 77 (3) (i) of the Punjab Tenancy Act mean a suit between a landlord and his tenant, for a tenant and his landlord, and not a suit between a tenant and some body who may be a proprietor but is not his landlord." Accordingly.

(b) that this suit being one "by a body of occupancy tenants against the body of village proprietors as such," and "not made on the basis of tenancy, *i.e.*, right of grazing not having accured to these tenants because they were tenants," the provision in S. 77, (3) (i) Punjab Tenancy Act was no bar to the suit being cognizable by a Civil Court. (Johnstone and Lal Chand, J.)

Sundar *v.* Wazira.—144 P.R. 1907; 188 P.W.R. 1907.

—— *Civil and Revenue Court—Partition—Collusive partition by a widow in Revenue proceeding of her husband's land—Subsequent suit by her husband's reversioners to avoid the partition—S. 158 (2) Act (XVII of 1887)—Rejection of their objections by the Revenue Court to the collusive partition.*

Held, that, where a widow under the cover of a Revenue partition proceedings consents to give collusively to the other share-holders

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all the best land, keeping only the worst for herself, her such act amounts to an alienation by way of gift, and on her death her husbands' reversioner's can sue to avoid that partition and to have the land re-divided and to get their proper share of what would have come to them on a fair partition, and that such a suit is cognizable by a Civil Court and its cognizance is not barred by section 158 (2) of Act XVII of 1887.

The fact that the reversioners' objections to the collusive partition were swept aside by the Revenue Officers does not make any difference. (Rattigan and Chevis, JJ.)

Dasandi *v.* Buta.—93 P.L.R. 1913; 74 P.R. 1913; 37 P.W.R. 1913; 18 I.C. 452.

——*Civil and Revenue Court—Partition suit for—Claim for compensation for improvements and disturbance.*

The absentee co-sharer in a certain holding brought a suit in the Civil Court to establish his rights. The defendants did not claim anything on account of expenses incurred by them during the plaintiff's absence, and the plaintiff's claim was decreed unconditionally. In a suit for partition between the parties brought subsequently, the Revenue Court passed an order that the defendants were entitled to compensation for improvements, but they must file a separate application for that purpose. The defendants sued accordingly and got a decree from the Revenue Court for a certain sum as compensation for improvements and disturbance. *Held*, that the suit was not cognizable by the Revenue Court. The question was one of title and should have been raised in the Civil Court in the first suit. (Clark, F.C.)

Ilahi *v.* Dadu.—3 P.R. 1902 Rev.; 70 P.L.R. 1902.

——*Civil and Revenue Courts—Plaintiff directed in partition proceedings in Revenue Courts to have his title established in Civil Court—Plea that suit was not maintainable owing to plaintiff having other joint lands.*

In partition proceedings started by the plaintiff in the Revenue Court of the Ferozepur District he was directed to have his title to partition established by Civil Court and a suit was filed by him. The defendant pleaded that as the parties had joint lands in the Lahore District also the suit was not maintainable. *Held*, that the plea had no force. (Robertson and Chitty, JJ.)

Sura Singh *v.* Sant Singh.—43 P.R. 1906; 122 P.L.R. 1996; 90 P.W.R. 1906;

——*Civil and Revenue Court—Sale of revenue paying land by District Judge without jurisdiction—Nullity—Claim for possession based on sale.*

Where certain mortgagee's rights were sold by auction and the purchaser sued for possession by way of foreclosure ;

Held, (i) that whether mortgage rights moveable or immoveable property, a mortgage foreclosed at the time of attachment is certainly immoveable property ; (ii) that the Civil executing Court was not

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empowered to sell immoveable property without reference to the revenue authorities in accordance with the rules and orders in this behalf and the sale being without jurisdiction was a nullity. (Hurry, J.)

Parem Singh *v.* Shair Singh.—p. 44 P.W.R. 1906.

—— *Civil and Revenue Court—Suit for wages—Rate fixed by Record of rights—Punjab Tenancy Act (XVI of 1887), S. 77 (3) (j).*

Held, that a suit by a *chamar* for the recovery of *haq sep* due to him under the terms of the *wajib-ul-arz* of the village is cognizable by a Civil Court. (Reid, J.)

Gujar *v.* Dula.—41 P.R. 1908; 88 P.W.R. 1908; 178 P.L.R. 1908.

—— *Civil and Revenue Court—Tenant—Entry on land essential—Suit for succession to occupancy rights of deceased tenant—Purchase of occupancy rights from deceased's tenants heir—Suit, for redemption of occupancy rights—Suit to establish rights of occupancy.*

A person does not become a tenant until he has actually entered into possession of the land, though the right to enter upon and possess the land may have accrued to him.

A suit by a person claiming to succeed to the occupancy tenure of a deceased tenant is cognizable not by the Revenue Courts but by the Civil Courts, in case the claimant has not entered into possession; upon entry, and not before, the claimant becomes a tenant. 44 P. R. 1891 (F. B.), *relied upon.*

A, an occupancy-tenant, mortgaged his rights with possession to B, the proprietor of the land. A died and on his death, his rights were mutated in favour of his brother and on the latter's death in favour of his sons, who sold the occupancy rights to C. Neither C nor the successors of A, ever entered into possession:

Held, that a suit by C for possession by redemption of the occupancy-rights was cognizable by a Civil Court and that C could not sue in a Revenue Court to establish his occupancy rights. (Chevis, J.)

Riza *v.* Girdhari Ram.—188 P.W.R. 1912; 14 I.C. 236.

— *Civil and Revenue Courts—Tenant—Suit for compensation brought more than a year after dispossession—Punjab Tenancy Act, XVI of 1887—Ss. 4, 14, 50, 51, and 77 (3) (g).*

The plaintiff, the tenant, sued the defendant the landlord, who had disspossessed him in 1915 for recovery of possession and obtained a decree on 8th May 1916. More than a year after his dispossession he brought the present suit for compensation.

Held, that the suit was cognizable only by a Revenue Court and not by Civil Court even though not brought within one year from date of plaintiff's dispossession. 64 P. R. 1898, *overruled.* 17 Cal. 926; 20 All. 471 and 21 All. 207, *referred to.* (Shah Din, Chevis and Le Rossignol, JJ.)

Akbar Hussain *v.* Karam Dad.—90 P.R. 1918; 48 I.C. 8 (F.B.)

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—*Civil and Revenue Courts—Test to determine—Punjab Tenancy Act.*

To determine whether a claim is cognizable by a Civil Court or by a Revenue Court, the plaint should be examined to ascertain the nature of the claim and if necessary, the plaintiff should be questioned as to the exact meaning of his claim. Neither the defence set up nor the evidence affords a criterion as to the nature of the claim. In suits for ejectment the Court should see whether the suit is for the ejectment of a tenant or a trespasser. If for the latter, the claim is cognizable by a Civil Court, and that Court should proceed to try it on its merits, but if it is found that the defendant is not a trespasser but a tenant, the suit should be dismissed. In the latter case, however, it would be open to the landlord to bring a fresh suit in the Revenue Court. (Chevis, J.)

Ghazau *v.* Bahadur.—236 P.L.R. 1911; 152 P.W.R. 1911; 11 I.C. 639.

—*Civil and Revenue Courts—Test to determine—Question primarily to be decided on the plaint unless ambiguous.*

Held, that when there is a question whether the case is one; for a Civil or a Revenue Court, primarily the plaint alone should be considered and where the plaint is ambiguous, the trial Court should always point ont to the plaintiff where the ambiguity lies and ask him to make his meaning clear.

That where the plaintiff on being required to clear up a certain ambiguity had made certain allegations of facts on the basis of which the cases were triable on a Revenue Court, *Held* that the plaintiffs were bound for the purposes of the case by the presentation of their claim and if they failed in the Revenue Court to prove their allegations, their suits should be simply dismissed. (Johnstone, C.J.)

Allah Diya *v.* Allah Bakhsh.—43 P.R. 1917; 110 P.W.R. 1917; 41 I.C. 120.

—*Civil and Revenue Courts—Test of—Suit by owner for declaration of right.*

The question of jurisdiction has to be decided entirely on the allegations in the plaint. Where plaintiffs sued for a declaration that they were in rightful possession of the land in suit as owners and that defendant set up a rival claim as the heir of a deceased occupancy tenant, while as a matter of fact he had no title to the land.

Held, that on the allegations in the plaint the suit was cognizable by a Civil Court.

The *locus standi* of the plaintiff to ask for relief from a Civil Court had in no way been affected by the subsequent decree obtained by the defendant in a Revenue Court. (Chevis, A.C. J. and Wilberforce, J.)

Karam Dad *v.* Hussain Bakhsh.—56 I.C. 548.

JURISDICTION—CRIMINAL COURTS.

——*Criminal Case—Cheating in British India—Abetment in Native State by person not a British subject—British India Court, if can try offence.*

Where a number of accused persons came with a young married Rajput girl from Indore and misrepresenting her to be a Mahajan virgin sold her to a person in British India and some others had assisted from Indore by affirming to persons sent by the complainant to take inquiries that the girl was really a Mahajan virgin.

Held, that the Courts in British India had no jurisdiction to try subjects of a native State for the offence of abetment out of British India of an act of cheating committed by others within British India. (Chevis, J.)

Raj Bahadur *v.* Emperor.—23 P.R. 1918 Cr.; 28 P.W.R. 1918 Cr.; 47 I.C. 447.

——*Criminal and Civil Courts—Adjudication by Civil Court—Effect.*

Held, that the Chief Court is competent to revise an order passed by a Magistrate charging an accused person with an offence. I. L. R. 27 Cal. 126, *dissented from.* 45 P.R. 1885 Cr, *distinguished.* 42 P.R. 1885 Cr., *referred to.*

The Chief Court considering the special circumstances of the case set aside the order charging the accused with an offence under section 420 of Indian Penal Code. (Robertson and Rattigan, JJ.)

Emperor *v.* Bishen Das.—33 P.R. 1910 Cr.; 57 P.L.R 1911; 8 I.C. 1161.

——*Criminal Courts—Civil Court if can question under S. 145 Criminal Procedure Code.*

A Civil Court cannot question the order of a magistrate under S. 145 Criminal Procedure Code made with jurisdiction. (Kensington and Chevis, JJ.)

Bhagwan Das *v.* Bhana Mal.—84 P.R. 1912; 137 P.W.R. 1912; 14 I.C. 566.

——*Criminal Court—Civil dispute—Complaint—Discouragement of.*

Every discouragement should be given to the habit of rushing into the Criminal Courts where a Civil dispute arises. (Robertson, J.)

Anant Singh *v.* Crown.—33 P.L.R. 1913; 10 P.W.R. 1913 Cr.; 18 I.C. 688.

——Civil and Criminal Courts—Maintenance—Order passed by Criminal Court—Compromise—Jurisdiction of Civil Court *See* Criminal Procedure Code, S. 488. (Clark, C.J.)

Rahim Ali *v.* Fatteh Ali.—39 P.R. 1905 Cr.; 108 P.L.R 1905.

——*Criminal Court—Power—Convicting magistrate not empowered to take.*

Held, "that the Court of appeal cannot pass an order under S. 100 Criminal Procedure Code, when the Magistrate who passed the original order convicting the accused was incompetent to do so." Accordingly, in a case of conviction by a Magistrate 3rd class the

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District Magistrate's order in appeal, under S. 106 Criminal Procedure Code, will be without jurisdiction. (Chatterji, J.)

Radha Singh *v.* The Crown.—6 P.R. 1907 Cr. ; 23 P.W.R. 1907 Cr. ;

— *Criminal Court—Illegal arrest.*

However, illegally an accused person may have been arrested, the Criminal Court is not debarred from trying him for an offence, if it has jurisdiction given by law to try him. (Reid, C.J. and Chatterji, J.)

Juma, *v.* King Emperor.—17 P.R. 1906 Cr. ; 60 P.L.R. 1907 ; 40 P.W.R. 1907 Cr.

— *Criminal Court—Magistrate—Trial by Magistrate of offence triable exclusively by Sessions Court.*

A Magistrate tried and convicted the accused of offences under sections 420 and 468 Indian Penal Code for forging a hundi for the purpose of cheating.

Held, that since the case fell under section 467 of the Indian Penal Code, offence exclusively triable by a Court of Session, the Magistrate was not competent to try and convict the accused He could only be tried by a Magistrate invested with powers under section 30 of the Criminal Procedure Code or by the Sessions Court. (Chevis, J.)

Lekhraj *v.* The Crown.—31 P.R. 1910 Cr.; 194 P.L.R 1910; 8 I.C. 389.

— Ex-parte *decree—Decree passed by Sub-Judge, second class—Power of second class Munsif to set aside the decree.*

A Sub-judge of the second class passed an *ex-parte* decree in a suit made over to him for trial by the Senior Sub-Judge under S 34 of the Punjab Courts Act. The Sub-Judge went on leave and the Senior Sub-Judge made over to a Munsif of the second class the application preferred by the defendant to set aside the *ex-parte* decree. It was contended that the Munsif was not competent to set aside the decree which was passed by a Court superior to him.

Held, that the Court of Sub-Judge of the second class was not superior for the purposes of the application and that the Munsif was competent. (Leslie Jones, J.)

Shib Lal *v.* Paras Ram.—86 P.L.R. 1917; 84 P.W.R 1917; 42 I.C. 242.

— *Forum—Of British Indian Courts—Accused a Patiala subject—Arrest on railway lines in Patiala territory—Charge of abetment in Patiala territory—Offence committed in British India.*

Held, (1) that the arrest of the accused, a subject of Patiala State by the British Indian Police on the Railway lines within the Patiala State territory, was lawful in as much as full and exclusive power and jurisdiction of every kind over the Railway lines and and over all persons within those lines had been ceded by the Patiala State to the British Government.

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(2) That the accused subjects of a native State could not be legally tried in a Court in British India for acts of abetment committed within the State of an offence committed in British India. (Shadi Lal and Martineau, JJ.)

Balwant Singh *v.* Emperor.—31 P.R. 1918 Cr. ; 48 I.C. 865.

— *Forum—Indent form—Specific provision.*

Where an indent form clearly specifies that all disputes in connection with the indent are to be settled and adjusted upon in a particular place only, the Civil Courts of that place will have jurisdiction to try a suit arising out of the disputes in connection with the indent. (Robertson, J.)

Commercial East India Agency Co., *v.* C. S. Mukerji.—96 P.L.R. 1913; 65 P.W.R. 1913; 18 I.C. 496.

— *Further appeal—Punjab Courts Act, (XVIII of 1884 as amended) S. 40 (1) (b)—Suit for redemption of land assessed with land revenue —Limitation Act, (XIV of 1859) S. 1 Cl. 15—Acknowledgement.*

Plaintiff's claim for possession, by redemption of mortgage on payment of Rs. 70 of land, the thirty times *jama* value of which appeared to be over Rs. 250, was dismissed on appeal by the Divisional Court as barred by limitation, on the ground that the plaintiffs had failed to disclose the date of the mortgage sought to be redeemed. The plaintiffs preferred a further appeal and relied on an acknowledgement made by the defendant respondents. It was contended for the respondents that further appeal did not lie in the case, and the judgment of the Divisional Court was right.

It was urged for the appellants that further appeal lay since the decree directly involved some claim to, or question respecting, property of the value of Rs. 250 or upwards.

Held, (1) that no further appeal lay in the case. 35 P.L.R. 1903 (F.B.), *distinguished* ; 94 P.R. 1890; 44 P.R. 1888 (F.B.) ; 132 P.R. 1893, *referred to.*

What is intended by 'property of like value,' in section 40 is not the 'property' in the suit, the value of which is the subject of the first part of the sub-section, and which has already been ascertained under the rules. There cannot be two valuations of the same subject-matter in the same suit to determine jurisdiction or course of appeal. The decree in this case only directly involved the subject-matter of the suit, and there was in the decree under appeal nothing of the nature of the price to be paid or charged to be levied or redeemed.

(2) That as the date of the mortgage was not disclosed by the plaintiffs, and it was not shown that the acknowledgment was made within 60 years of the date of the mortgage, the claim was rightly dismissed. The words "in the meantime," in clause 15 of S. 1 of Act XIV of 1859, refer back to the time mentioned in the same clause, *i. e.* in the case of immoveable property—"60 years from the time of the mortgage."—109 P.R. 1884, *followed*. I.L.R. 1 All. 425, *not followed*. p. 88 W.N. All. 1894, *referred to*. (Harris, J.)

Bhag Mal *v.* Dhouna.—82 P.L.R. 1903.

JURISDICTION—OBJECTION TO.

—— *Objection to—Absence of—Whether confers jurisdiction.*

Mere absence of objection does not give a Court jurisdiction which it does not possess. (Rattigan and Scott Smith, JJ.)

Lahore Bank Ltd. *v.* Lakhi Ram.—242 P.L.R. 1913; 144 and 215 P.W.R. 1913; 105 P.R. 1913; 19 I.C. 970.

—— Objection to—Reference by Collector to Divisonal Court—Reference under Land Acquisition Act—Invalidity—Objection to jurisdiction—Competency of party to take at any time. *See* Land Acquisition Act, Ss. 18 and 19.

64 P. R. 1914; 158 P.W.R. 1914; 244 P.L.R. 1914; 25 I.C. 448.

—— *Objection to—Acquiescence by parties—Subsequent objection.*

Where in a cause which a Court is competent to try, the parties without objection join issue and go to trial upon the merits the defendant cannot subsequently dispute the jurisdiction of the Court upon the ground that there were irregularties in the initial procedure which if objected to at the time would have led to the dismissal of the suit. (Shadi Lal, J.)

Imperial Oil Shop and General Mills Co. Delhi *v.* Ram Chand.—91 P.R. 1917; 36 I.C. 980.

—— *Objection to—Waiver of—Case triable by superior court—Trial by inferior Court—Prejudice, presumption of.*

Where an inferior Court disposes of a case which should have been heard by a superior Court there is ground for thinking that the parties were prejudiced. A party is not estopped from questioning the jurisdiction of a Court to hear an appeal though he himself presented the appeal in that Court. 16 P. R. 1907, *followed.* 36 P. R. 1902, *disitnguished.* (Broadway, J.)

Cheloo *v.* Kali Das.—21 P.R. 1918; 44 I.C. 816.

—— *Pecuniary jurisdiction—Suit for land and other property—Joint value over Rs. 250—Further appeal.*

Plaintiff sued for possession of certain property consisting of land and village *mianas.* The value of land for purpose of jurisdiction was Rs. 221-4-0 and of the mianas Rs. 184-6-6, the combined value being thus Rs. 405-10-6. *Held*, that a suit of this kind remains a land suit, and the question whether a further appeal lies depends on the merits from the jurisdictional point of view of the suit considered, in its aspect as land suit, and isolated from the rest of the claim. Held accordingly that no further appeal lay in this case. 100 P. L. R. 1904, *referred to.* (Barton, J.C.)

Malik Azam *v.* Mian Muhammad.—3 P.W.R. 1916 (N.W F.P.)

—— *Pecuniary jurisdiction—Suit by vendee for possession—Decree on payment of sum exceeding Courts pecuniary jurisdiction.*

Held, that, in a suit for possession of land brought by a vendee against his vendor, a Court has no jurisdiction to pass a decree for its possession on payment of a sum which exceeds the pecuniary limit of its jurisdiction. In such a case the proper

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course to be adopted is to return the plaint to the plaintiff for presenting it to the Court having jurisdiction to entertain it. (Robertson and Shah Din, JJ.)

Dhian Singh v. Dhian Singh.—51 P.W.R. 1912 ; 69 P.L.R. 1912 ; 13 I.C. 312.

——*Practice—Suit by tenant for share of produce, forcibly removed by landlord—Punjab Tenancy Act, 1887, Ss. 50, 77 (i)—Practice—Civil or Revenue Court returning plaint—Reference to Chief Court.*

Held, that, when a plaint has been returned once by a Revenue Court for presentation to a Civil Court, the Civil Court, if it thinks that the suit is cognizable by a Revenue Court, should at once refer the question of jurisdiction for decision to the Chief Court. So, too, if a Revenue Court disagrees with the opinion of the Civil Court, it should at once refer the question of jurisdiction.

Held, also, that a suit by a tenant for his share of the produce forcibly removed by the landlord is cognizable by a Revenue Court. (Chevis, J.)

Heta Ram v. Chandan.—49 P.W.R. 1912 ; 101 P.L.R. 1912 ; 13 I.C. 447.

——*Pre-emption—Decree in excess of preliminary limit—Its incompetency to decree possession or payment of a sum exceeding its pecuniary jurisdiction—Return of plaint.*

Held, that the Court was incompetent to give a decree for possession on payment of a sum exceeding its pecuniary jurisdiction. (Chatterji, J.)

Gulshair Ali v. Wazira.—79 P.W.R. 1907.

——*Revenue Courts Jurisdiction to go behind decisions of Civil Courts.*

It is not permissible for the Revenue Courts to go behind the decisions of Civil Courts and re-open matters already decided by competent judicial authority. (Tupper F. C.)

Gurdas v. Hussain.—13 P.R. 1901 Rev ; 41 P.L.R. 1902.

——*Revision—Ground upon which Chief Court will interfere*—Res-judicata *—Whether rule applies to subeequent suit when first suit withdrawn.*

In civil cases interference on the revision side is permissible only where a fical decree or an interlocutory order is so unjust as is likely to put things into so inconvenient a position that irreparable harm would be done to the applicant for revision.

Where a suit is withdrawn and the Court expressly refrained from adjudicating upon any question or issue in the case, the rule of *res judicata* will not apply to a subsequent suit brought by the same plaintiff against the same defendant upon the same cause of action. (Johnstone, J.)

Mst. Saadat Sultan Begam v. Muhammad Munir Khan.—249 P.L.R. 1911; 149 P.W.R 1911; 11 I.C. 831.

——*Small Cause Court—Claim for recovery of debt after cncelling an agreement to forego debt—Provincial Small Cause Courts Act IX of of 1887 Arts 15 and 16 of 2nd Sch.—Return of plaint.*

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Held, that a plaint asking for a debt, after cancellation of an instrument foregoing the debt in consideration of a payment of eight annas in the rupee, was not cognizable by a Small Cause Court, as involving the cancellation of an instrument, and to get a contract avoided. (Kensington, J.)

Pohu Mall *v.* Seth Lalji.—30 P.W.R. 1907.

——*Small Cause Court—Claim for money on account of damages.*

Held, that a suit for damages for breach of betrothal contract is an unclassed suit and excepted from the jurisdiction of the Small Cause Courts under Art. 35 (9) of the 2nd Schedule to Provincial Small Cause Courts Act, the expression "compensation" as used in that clause having the same meaning as in S. 73 of the Indian Contract Act, 1872. (Rattigan, J.)

Hakim *v.* Ralya.—125 P.R. 1907; 80 P.W.R. 1907.

——*Small Cause Court—Defendant not residing within jurisdiction.*

Held, that a Court of Small Causes has juisdiction to entertain a suit against a military officer not residing within the jurisdiction of such Court when the cause of action arose within such jurisdiction.

No. 1 P. R. 1893 F. B. has become obsolete by the repeal of Section 151 of the Army Act 1881. (Harris and Rattigan, JJ.)

Phelps & Co. *v.* Captain H. S. Hammond.—93 P.R. 1900; 37 P.L.R. 1901.

——*Small Cause Court—Incompetency of another court to have a Small Cause suit—Provincial Small Cause Courts Act, (9 of 1887)—Claim for a share in the offerings of shrine.*

Held, that a Munsif whose Court is situate within the local limits of another Munsif invested with powers of a Small Cause Court to try all small causes of a certain value, has no jurisdiction to hear and determine any Small Cause up to the extent of that value. The claim for recovery of an amount as a share in the offerings of a shrine is cognizable by a Court of Small Causes. 84 P. R. 1892, *followed*. (Shah Din and Chevis, JJ.)

Taba *v.* Mihan.—92 P.W.R. 1911; 11 I.C. 410.

——*Small Cause Courts, Pro Small Cause Courts Act IX of 1887—S. 23 Arts 8 and 28 claim for rent of shops based on will.*

Held, 1. (*a*) that a claim for a *sum of money* alleged to be due as rent for the use and occupation of houses or shops (bequeathed by the last owner), would be cognizable by Small Cause Court under Art, 8 of the Act; (*b*) that Art. 28 was inapplicable, there being no question of a claim for a legacy or for the whole or a share of a residue bequeathed by a testator.

2. (*a*) That where the pleas of the defendant contest the title of the plaintiff to the bequeathed property, the Small Cause Court has powor to adjudicate upon the claim even though in order to do so it may have to incidentally decide the question of title (*b*) but, as it cannot give any final decision upon that question the Court has a discretion whether it should decide a claim or not in

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which an important question of title is involved. (Rattigan, J.)

Mst. Jamma *v.* Mahtab Mal —p. 53 P.W.R. 1906.

——*Small Cause Provincial Small cause Courts Act IX of 1887 Sch. II Act, 18 suit by heir for recovery of moveable property deposited by owner.*

Held, that a suit by an heir for recovery of moveable property or its price against the defendant with whom the owner had deposited it for safe custody is not excepted from the jurisdiction of the Court of Small Causes. Such a claim does not fall within article 18 of the second schedule of the Provincial Small Cause Courts Act. (Shah Din, J.)

Mst. Kartar Devi *v. Mst.* Surasti.—9 P.R. 1908 ; 98 P.L.R. 1908 ; 28 P.W.R. 1908.

— *Small Cause Court—Punjab Courts Act section (1) (b)—Suit for share of*—Dharat.

A suit for share of *dharat* collected by defendant is cognizable by a Civil Court and that by a Court of Small Causes. (Reid, C.J.)

Mohan Singh *v* Taj Mohamed.—120 P.R. 1912; 64 P.W.R 1913; 103 P.L.R. 1913; 18 I.C. 532.

—— *Small Cause Court—Suit for value of skins—Custom.*

A suit to recover the price of skins of certain animals alleged to belong by custom to plaintiff is not excepted from the cognizance of a Small Cause Court. (Rattigan, J.)

Billa *v.* Chhuta.—159 P.L.R. 1911; 174 P.W.R. 1911; 10 I.C. 35.

—— *Test of determining—Forum—Claim suit.*

In a regular suit brought by an unsuccessful objector to the attachment of immoveable property, on the ground of his being its owner, to which the judgment-debtor is also a party, the jurisdiction and course of appeal depend upon the market value of the property and not the decretal amount.

OBITER.—The decision in such a case is *resjudicata* between the plaintiff and the decree-holder as well as the judgment-debtor 94 P. R. 1908, 74 P. W. R. 1908 (F.B); 17 A 69, *followed and explained*; 55 P. R. 1906; 67 P. W. R. 1906 ; 142 P. R. 1906; 174 P. W. R. 1906, *dissented*.

Where a person relies on a certain will which has not been proved, he is not bound by any particular sentence to be found therein that may be adverse to his interests.

Where a sale deed is in favour of a dancing girl and her daughter able to earn, there is no presumption of the latter's being *benami* purchaser.

In case of a sale in favour of two persons, the presumption is that their shares are equal, if there is no proof of their respective interests therein.

Where a literate person signs a deed of transfer as a marginal witness and also appears before the Sub-Registrar to identify the executant, in which a Will has been acted upon and reference is

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given to it specially, the presumption is that he is fully aware of its contents and makes an admission of the will being genuine and valid and no further proof is necessary when the will is set up against him afterwards, but others affected bythe will are not estopped from disputing its validity, etc.

Parties in this case relied upon Muhammadan Law. (Robertson and Chevis, JJ.)

Kallu Mal *v.* Shamas-ud-Din & *Mst.* Malik Jan.—269 P.W.R. 1912; 41 P.R. 1913 ; 14 P.L.R. 1913 ; 17 I.C. 196.

—— *Valuation of suit—Appeal—Further appeal—Claim for possession of house—Decree on payment of certain sum for improvements—Court Fee Act (VII of 1870) Section 7 V (e), 9.*

In a suit for possession of a house the plaintiff is bound to state market value of the house and he must pay Court-fee on the value stated by him. When it appears to it or the defendant pleads that the plaintiff has under-estimated his claim, the Court ought to take immediate steps under section 9 of the Court Fees Act for ascertaining the market value and order deficiency in Court-fee to be made up, if enquiry shows that the value has actually been under-estimated by the plaintiff. The value fixed by the plaintiff is a tentative one, and it is the value found by Court, and not that stated by the plaintiff, that governs the jurisdiction of the original Court. Where it exceeds the jurisdiction of the Court, the Court must return the plaint for presentation to proper Court, at whatever stage of the suit the true value may be determined by it. Similarly, the Appellate Court has no jurisdiction to adjudicate on the appeal when it finds that the value of the suit exceeds its pecuniary jurisdiction.

The plaintiff sued for possession of a house which he valued at Rs. 90 in the Court of a *Munsif* of the 1st Class and obtained a decree for possession on payment of Rs. 634-7-0, value of improvements to the house by the defendant. He appealed to the District Judge against so much of the decree as awarded compensation for improvements, and the District Judge held that he had jurisdiction to hear the appeal. *Held*, by the Full Bench, that the District Judge had no jurisdiction to entertain the appeal. (Reid, Rattigan and Lal Chand, JJ.)

Abdul Rahman *v.* Charag Din.—19 P.R. 1908; 129 P.L.R. 1908; 38 P.W.R. 1908.

—— *Valuation—Account suit—Course of appeal.*

In a suit for accounts, where the plaintiff has valued his claim at a sum not exceeding Rs. 5,000, the appeal against the preliminary decree passed in favour of the plaintiff lies to the Divisional Court and not to the Chief Court.

When, in a case, appeal lies to the Chief Court, but is filed in and heard by the Division Court, and a further appeal is filed in the Chief Court, the further appeal may be converted into a first appeal, if this course does not prejudice any of the parties.

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58 P. R. 1902; and 46 P. R. 1906; 94 P. L. R. 1906; 3 I. C. 365, *distinguished*. In the case of a joint Hindu family carrying on a trading business, the ordinary rules of partnership do not apply in *toto*; the concern must be governed also by rules of Hindu Law, and one of such rules would be, that the death of one member of the family cannot operate to dissolve the family partnership. But it is equally clear that, where a partnership is composed of certain individual member of a joint Hindu family and outsiders, the relations of the parties are governed by the ordinary law of contract and not by Hindu Law. 25 A. 378; 28 M. 344, *referred to*.

Some of the member of a joint Hindu family entered into a partnership. The deed did not show that the members of the family were acting on behalf of the family. It was contended that on the death of one of the member of the family, the partnership, was dissolved. *Held*, that the contention was valid.

Held, also, that no extraneous evidence was admissible to prove that the members of the family were acting on behalf of the family in the concern and not in their individual capacity.

A suit for accounts after the dissolution of a partnership is governed by Art. 106, Limitation Act (1877).

Copies of documents required by S. 78 or S. 86 of the Evidence Act to be certified are not admissible in evidence when they are not duly certified. The Chief Court held that the several acknowledgments relied on by the plaintiffs did not extend the period of limitation, as they did not fall within the purview of S. 19 of the Limitation Act. (Johnstone and Chitty, JJ.)

Ram Pershad *v.* Rattan Chand.—87 P. L. R 1909; 4 I. C. 929.

— *Valuation—Claim suit—Value.*

The value for purposes of jurisdiction both in the original Court and in the appeal is the value of the property when the contest will be not only between the claimant and the judgment debtor. (Robertson & Shah Din, JJ.) Sardar Begam *v.* Mehr Chand.—89 P.L.R. 1913; 82 P. R. 1913; 38 P. W. R. 1913; 18 I. C. 820.

— *Valuation—Jurisdictional value of a suit by a landlord against a trespasser for possession of occupancy holding on hereditary tenant's death—Tanqih haquq muzarian.*

Held, that the jurisdictional value of a suit by a landlord for recovery of occupancy holding from a person alleged to have occupied it as a trespasser on the occupancy tenant's death is 30 times, and not 15 times, the amount of the land revenue, notwithstanding the defendant's plea that he has succeeded to it under section 59 of Act XVI of 1887 as an heir of the deceased tenant.

Held, also, that correctness of pedigree-table cannot be questioned for the first time in further appeal; and that the document called "*tanqih haquq muzarin*" is admissible to show whether the common ancestor of a person claiming to succeed to an occupancy holding occupied it or not. (Rattigan, J.)

Bhagta *v.* Phullu Singh.—117 P. L. R. 1909; 156 P. W. R. 1909; 3 I. C. 980.

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——*Valuation—Suit for dissolution of partnership—Course of appeal.*

This was a suit for dissolution and winding up of a partnership, rendition of accounts by the defendants, and a decree for such sums as the plaintiffs may be found entitled to against the proper parties. The plaintiffs valued their suit for purposes of Court-fees at Rs. 2,000; but added the usual clause that they would pay the additional fee if more was found due. The District Judge passed a decree for an amount over Rs. 5,000. The defendants appealed to the Divisional Judge, who modified the decree on certain points. The defendants filed a further appeal in the Chief Court, and objection was taken that the Divisional Judge had no jurisdiction to hear the appeal which lay to the Chief Court.

Held, that the contention was sound, and the Divisional Court had no jurisdiction to hear the appeal. 20 Bom. 265; 1 P. R. 1887 (F. B.); 63 P. R. 1891; 169 P. R. 1888; 20 P. R. 1879; 40 and 86 P. R. 1892, *referred to*. (Chatterji and Anderson, JJ.)

Maman Mall *v.* Abdul Aziz.—58 P. R. 1902

——*Valuation—Partnership—Accounts—Suit for dissolution of partnership and settlement of account.*

The plaintiff sued for dissolution of a partnership and a decree for such sum as he may be found entitled to against the defendant. He valued the claim approximately at Rs. 130. The suit was tried by a Munsif who had pecuniary jurisdiction up to Rs. 1,000 and a decree was passed by him for Rs. 1,676-4-3. The defendant appealed to Divisional Judge and consented to a decree for Rs. 1,000 to be passed against him and the decree was passed as prayed for by him. On further appeal by the plaintiff—

Held, that the Munsif had no jurisdiction to pass any decree in the case once he found that the amount due to the plaintiff exceeded the pecuniary limit of his jurisdiction and that the decrees passed by the Munsif and the Divisional Judge must be set aside and the suit remanded to a Court competent to hear the case. 168 P.R 1888; 58 P.R. 1902: 31 Cal. 365, *followed*. 21 Cal. 550, *referred to*. (Johnstone and Rattigan, JJ.)

Munna Lal *v.* Samanu.—46 P.R. 1906; 94 P.L.R. 1906; 62 P.W.R. 1906.

——*Valuation—Pre-emption suit—Appeal.*

Held, that, for purposes of determining the course of appeal in a pre-emption suit, the value for purposes of jurisdiction must only be looked at and not the amount which the pre-emptors may have to pay. (Kensington and Chevis, JJ.)

Gujar *v.* Fatteh Jung.—225 P.L.R. 1912; 201 P.W.R. 1912; 15 I.C. 407.

——*Valuation—Pre-emption suit—Value of property—Claim for compensation by defendant.*

Held, that in a suit for possession by right of pre-emption the value of the suit for purposes of jurisdiction is the value of the property which it is sought to pre-empt. It must ordinarily and in

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the absence of special circumstances suggestive of *mala files* on the part of the plaintiff be determined with reference to the claim made, and not the defence set up by the defendant. *Held*, further, that the value of the suit is not affected because the defendant claims on equitable grounds that compensation for improvements be paid to him before the plaintiff can take possession. (Robertson, J.)

Dharm Chand *v.* Girdhari Lal.—38 P.L.R. 1902.

— *Valuation—Pre-emption suit—Appeal—Suits Valuation Act (VII of 1887), S. 11—Court-fee—Payment of deficiency after limitation period.*

The District Judge declined to hear an appeal in a pre-emption suit valued for purposes of jurisdiction at less than Rs. 100, decided by a Munsiff of the 3rd class, on the ground that the suit was under-valued, and the true value for purposes of jurisdiction, was over Rs. 100. The District Judge also held that the plaintiff could not be allowed to make up the deficiency in the payment of Court fee after the period of limitation prescribed for such suits had expired.

Held, (1) that the District Judge had overlooked the provisions of section 11 of Act VII of 1887 (Suits Valuation Act), and that he should have acted in accordance with them; (2) that as the case fell within those provisions, the proceedings of the Munsiff were not void for want of jurisdiction; (3) that the deficiency in the Court fee could be levied after the period of limitation had expired. The Chief Court remanded the appeal to be determined by the Divisional Judge having jurisdiction to try the case. I. L. R. 15 All. 65; 10 All. 11; 23 All. 423; 24 All. 218, *not followed*. 3 P. R. 1893; C. A. No. 635 of 1902; I. L. R. 19 Cal. 780; 10 Cal. 44, *followed*. (Anderson, J.)

Ram *v.* Taja.—74 P. R. 1903 Note; 173 P. L. R. 1903.

— *Valuation—Pre-emption suit—Claim for pre-emption of land—Competency of Court to entertain a suit with regard to its value at thirty times the jama, its incompetency to decree possession on payment of a sum beyond the limits of its pecuniary jurisdiction—Suits Valuation Act, Ss. 3 and 4—Return or dismissal of plaint when claim found beyond.*

Held, that S. 4 of the Suits Valuation Act while it gives a rule for the valuation of suit for pre-emption does not authorise decrees being given beyond the competency of the Court. Accordingly, that where the value of land at 30 times the Jama was within the jurisdiction of a Munsiff 3rd class, he was competent to entertain the suit or pre-emption of that land, but had no jurisdiction to pass a decree for pre-emption on payment of a sum of money beyond his pecuniary limits of jurisdiction.

Held, that strictly speaking the claim ought to be dismissed, when it is found beyond the competency of the Court to decree; 169 P. R. 1888; 20 P. R. 1879, *referred to*; but following the ordinary practice it was returned to the District Judge for being sent to a Court of competent jurisdiction through the plaintiff to whom the plaint should be returned. (Chatterji, J.)

Warayam Singh *v.* Bela Singh.—16 P. W. R. 1907.

JURISDICTION—VALUATION.

—*Valuation for purposes of—Suit under O. 21, R. 63 by decree-holder—Value of suit.*

In a suit for declaration under Order 21, Rule 63, of the Civil Procedure Code, 1908, by the decree-holder, where there is no dispute as to title between the judgment-debtor and the other objector and the former is mere a *pro forma* defendant, the value of the suit for purposes of jurisdiction is the amount of the decree. (Chevis and Shadi Lal, JJ.)

Bhagwan Das *v.* Kanshi Ram.—253. P. L. R. 1914; 145 P.W.R. 1914; 25 I. C. 180.

—*Valuation of suit—Suit for declaration that certain house is not liable to attachment and sale in execution of decree—Value of property and amount of decree—Subordinate Judge, Second Class—Amount of decree below Rs. 5,000 but value of house Rs. 1,000—Competency to try.*

Held, that for the purposes of jurisdiction, the value of a suit for a declaration that certain house is not liable to attachment and sale in execution of a decree against both the decree-holder and the judgment-debtor, is the value of the property, whether the judgment-debtor resists the claim or not. 41 P. R. 1918, *followed*. *Held*, consequently, that although the amount of a decree was less than Rs. 5,000 the house in dispute having been found to be of the value of Rs. 10,000 or more, Subordinate Judge, II Class, who had power only to try cases not exceeding Rs. 5,000 in value had no jurisdiction to try the present case. (Shadi Lal and Martineau, JJ.)

Shiv Ram *v.* Khurshed Ahmad.—1 Lah. L. J. 87.

—*Valuation—Suits Valuations Act (VII of 1887), S. 8—Further appeal—Punjab Courts Act (XVIII of 1884), S. 70 (1) (b).*

The plaintiff filed an application under S. 70 (1) (*a*) and (*b*) of Act XVIII of 1884 as amended by Act XXV of 1899 in a suit for a perpetual injunction to the effect that the defendants should not retain the plaintiffs from saying prayers in a certain mosque and from setting up their own *Imam* to lead the prayers of their congregation and from performing other ritual connected with the Divine service.

Held, that the application did not lie, under S. 70 (1) (*b*), as the value for Court-fees was the value for purposes of jurisdiction and that value was assessed in the Court of first instance and in the Chief Court at Rs. 100 only, being less than Rs. 200. 50 P. R. 1896, *followed*. (Reid, J.)

Umar Din *v.* Abdulla.—43 P. L. R. 1903.

—*Valuation—Suit to set aside sale of landed property.*

Held, that for purposes of jurisdiction the value of a relief claimed in a suit for a declaration to the effect that a sale-deed comprising landed property was invalid must be calculated at thirty times the land-revenue, and the consideration entered in the sale-deed is immaterial in determining the value. (Clark, C. J.)

Murad *v. Mst.* Ghulam Fatima.—71 P. L. R. 1902.

JURISDICTION.

——*Contract for supply of goods—Place where performance completed.*

Plaintiff is a resident of Lahore and defendant a resident of Cochin. The parties made a contract under which defendant was to supply plaintiff with certain goods and send them off for Lahore within one month. Plaintiff paid in advance, a part of the price fixed, and the balance was to be paid by a bill drawn by defendant on plaintiff's firm at Lahore.

The goods were not despatched, and plaintiff sued for the recovery of the money paid in advance and for damages, and the question was whether the Lahore Court had jurisdiction.

Held, the suit lay at Lahore as that was the place where the contract was to be performed or performance thereof completed, within the meaning of Exp. III (2), S. 17, C. P. C. (Clark, C. J.)

Premji Khetsey *v.* Ghulam Sarwar Khan.—36 P.R. 1908 ; 85 P.W.R. 1908.

KIDNAPPING *See* Penal Code, Ss. 361—363.

LACHES.

——*Effect of—Effect of on interest.*

That as the document was silent as to interest, and B waited for several years and did not take earlier steps to recover the amount of his advance on A's failure to carry out the contract, he was not equitably entitled to interest. (Kensington, J.)

Dharam Singh *v.* Ali Murad Khan.—6 P.L.R. 1912 ; 219 P.W.R. 1911 ; 12 I.C. 616.

——*Suit filed after great delay.*

Held, that a suit by the daughter of the deceased proprietor based on right of succession for possession of immoveable property which the defendants, collaterals of the deceased, had held for 11½ years was not liable to be defeated on the ground of great delay in filing the suit. *Held*, also, that the property being self acquired of the proprietor the collaterals were not entitled to succeed to it under Hindu Law or Custom. (Reid, C.J. and Rattigan, J.)

Mst. Bua Ditti *v.* Wariam Singh.—212 P.W.R. 1911; 64 P.L.R. 1911; 10 I.C. 819.

LAMBARDAR—APPOINTMENT.

——*Appointment of—Disqualification of candidate—Land Revenue Rule No. 177 (vii) (c).*

The Commissioner cancelled the appointment of the petitioner as *lambardar*, on the ground that he inherited from his father, the deceased *lambardar*, less than one *kicha bhigha* in the village, though he had land in the adjoining village, which was sufficient security for the revenue for which he was responsible as *lambardar*. *Held*, that the order of the Commissioner was wrong, as under section 77 of the Punjab Land Revenue Act the Government could proceed against

LAMBARDAR—DISMISSAL.

the land of the *lambardar* in the adjoining village in case of default in payment of revenue. Under Land Revenue Rule 177 (*iii*) (*c*) absence from the estate is a disqualification only if for that reason the *lambardar* is unable to discharge the duties of his office. (Tupper F. C.)

Chahat *v.* Murad Ali.—2 P.R. 1903 Rev. ; 98 P.L.R 1903.

——*Dismissal for indebtedness—Acquisition of property before vacancy is filled up—Ground for re-appointment.*

When a *lambardar* is dismissed for indebtedness and before the vacancy caused by his dismissal is filled up, he acquires sufficient property by gift or otherwise, he should be re-appointed. It is inexpedient to change *lambardars* if a change can be avoided. If from whatever cause, there is sufficient security for the recovery of the revenue for which the *lambardar* is responsible, he should not be dismissed for indebtedness. (Tupper, F. C.)

Fakira *v.* Munga —3 P.R 1903 Rev. ; 99 P.L.R. 1903.

——*Dismissal of for failure to assist in recruiting—Wheiher ground for excluding the family from lambardari succession*

Where H was a hereditary claimant to the headmanship and his father was dismissed from the post of Lambardar for failure to assist in recruiting. *Held*, there are certain offences, which exclude, and properly exclude all members of the family of the offender from the office of headman. But the failure of particular individual to assist in recruiting unless he is a member of a tribe or family, which for specific reasons, *e.g.*, the lack of connections with the classes from whom recruits are likely to be obtainable, is permanently unlikely to be successful in this respect, is not a matter which should exclude the claims of the family. (Maynard, F. C.)

Haidar *v.* The Crown.—4 P. R. 1919 (Rev.); 54 I. C. 861.

——*Succession to the office of.*

The limits of relationship within which the rule of primogeniture must be applied in appointing a Lambardar are laid down in Revenue Rule 179 (*i*) (*a*).

Where both the claimants were descendants in the male line of the paternal grandfather of the last incumbent, one who belonged to the senior branch of the family and was one degree nearer to the deceased appointed as a Lambardar notwithstanding the fact that no common ancestor had held the office before. His claim was held not prejudiced by his father's temporary absence from the village. (Tupper. F. C.)

Yadu *v.* Dani.—5 P.R. 1901 Rev.; 108 P.L.R. 1901.

——*Successor—Appointment of indefault of an heir of last incumbent—Rival claimant—Collector's discretionary power of appointment not ordinarily to be interfered with—Lambardari Rule No 15.*

Held, that, where a *lambardar* dies without heirs, the question of the appointment of a successor should be dealt with under Rule 15 of the Lambardari Rules as though it were a case of the first appointment of a *lambardar*. *Held*, that, an officer

LAMBARDAR—SUCCESSION.

making an appointment under Rule 15 of the lambardari Rules is at liberty to consider all matters which may reasonably be regarded as relevent to the suitability of an appointment, and he is expected, to decide between rival candidates according to the general balance of their respective claims and of the administrative advantages or disadvantages, of appointing each respectively. If he exercise his discretion in a reasonable manner, neither ignoring any portion of those matters which he ought to consider, nor perversely running counter to the general sense of the rule, his decision ought to be allowed to stand, and the mere fact that an appellate or revising officer takes a different view of personal claims is not a good reason for upsetting or modifying that decision. (Maynard, F. C.)

Chaudria Mashir Ali *v.* Malik Chiragh Khan.—131 P.L.R. 1918; 1 P.R. 1918 (Rev.); 2 P.W.R. 1918 (Rev.); 45 I.C. 87.

LAND ACQUISITION ACT.

—*Award—Collectors' award, final except by remedy under the Act—Jurisdiction of Civil Court.*

Where under the Land Acquisition Act the plaintiffs' claim was adjudicated on by the Collector and they did not within the prescribed time avail themselves of their right to demand reference under section 18 of the Act, but brought a separate suit in a Civil Court to contest the award. *Held*, that the suit did not lie. (Robertson and Kensington, JJ.)

Sher Khan *v.* Shamsher Khan.—37 P.R. 1905; 35 P.L.R. 1905.

—*Costs in Cases of.*

In Cases under the Land Acquisition Act, costs should be calculated in the same way as in ordinary suits. 31 M. 328 : C.A. No. 144 of 1913 (unpublished), *referred*. (Scott Smith and Brodway, JJ.)

Dayanand Anglo Vedic College Management and Trusts Society *v.* Secretary of State.—126 P.R. 1916 ; 37 I.C. 760.

—*Compensation for area recorded as Shamilat but claimed as exclusive property.*

Where H. M, who in the settlement papers were entered as tenants at will of a certain area out of the Shamlat of the village, contended that they were its exclusive owners :—

Held, that their contention is good inasmuch as the following circumstances are sufficient to rebut the presumption arising from the Settlement entry :—(1) That their proprietary holding immediately adjoins the area in dispute. The rule is that when land is emerged the person who owns the adjacent land is entitled to get it. (2) That they have been in possession as owners ever since the area emerged and have reclaimed it.

Held, also, that in land acquisition cases persons diliberately omitting to claim the property to be acquired or accepting the award treating the land as Shamlat are ordinarily estopped from afterwards asserting their right before the Civil Court. (Clark, C. J.)

Haji Umar Din *v.* Khair Din.—138 P.W.R. 1909.

LAND ACQUISITION ACT.

——*Land acquired by Government—Compensation—Principle to be applied in awarding compensation.*

When land is acquired by Government under the Land Acquisition Act, the principle to be applied in awarding compensation under the Act is :—That an owner is entitled to have the price of his land fixed in reference to the probable use which will give him the best return. I. L. R. 11 Cal. 103; 10 Bom. 585; 15 Bom. 279; 16 Mad. 369 (P. C.); 44 P. R. 1904, *referred to.* (Chatterji and Rattigan, JJ.)

Hira Nand *v.* The Secretary of State for India —21 P.R. 1905; 132 P.L.R. 1905.

——*Scope of—Refund, provision.*

Held, that an order made by a court in a proceeding under the Land Acquisition Act directing a person who has received the money awarded to him to refund it, is not appealable. 32 C. 921, *followed*. *Held*, also, that as there is no provision in the Act empowering the court to make such an order, its order is wholly without jurisdiction so as to justify interference in revision. (Martineau, J.)

Gohar Sultan *v.* Ali Mohamad.—3 Lah.L.J. 421; 63 I.C. 1.

——*S. 3 (b)—Person interested.*

Held, that a lessee of lands acquired by Government with five years to run is a "person interested" within the meaning of Section 3 (*b*) of the Land Acquisition Act. (Reid, J.)

Mehar Bassa *v.* Collector of Lahore.—18 P.R. 1902; 184 P.L.R. 1901.

——*S. 3 (b) "Person interested" meaning of.*

A person who has entered into a valid agreement for the purchase of land is a "person interested" within the meaning of S. 3 (b). (Shadi Lal and Martineau, JJ.)

Chuttan Lal *v.* Mul Chand.—18 P.R. 1917; 28 P.W.R. 1917; 37 I.C. 822.

—— *S. 9—Damages, claim for, if sustainable—Market value at the date of acquisition.*

In a suit for enhancement of compensation awarded by the Collector for land acquired by a public body for a public purpose a claim for damages for severance cannot be entertained by the Civil Court unless it was originally made before the Collector.

The question of the market value of land at the date of the acquisition does not depend on the result of the acquisition. (Chevis, J.)

Umar Baksh *v.* The Secretary of State.—145 P.W.R. 1918; 46 I.C. 906.

LAND ACQUISITION ACT, 1894, Ss. 9 and 11.

——*S. 9—Notice to persons interested—Omission to make claim on date fixed—Jurisdiction of collector to consider claim before award.*

In a land acquisition case it appeared that the notice issued by the Collector under S. 9 of the Act directed the persons interested to appear and state their objections on the 20th July 1912, plaintiff failed to appear on the date in spite of the fact that the notice was duly served upon him. Eventually he appeared on 21st August and filed written objections which were considered by the Collector who made his award.

Held, that the plaintiff could not be said to have omitted to make a claim pursuant to the notice given under S. 9 merely because he did not make it by the date originally fixed in the notice; and that at any time before giving his award the Collector had jurisdiction to deal with any claim made to him under section 9 (2) of the Act. (Scott Smith and Shadi Lal, JJ.)

The Secretary of State *v.* Sohan Lal.—60 P.R. 1918; 76 P.W.R. 1918; 44 I.C. 883.

——*Ss. 11, 12 and 18—Award—Requisites of a valid award—Reference to Court—In the absence of a valid award—Jurisdiction of Civil Court.*

Where a declaration is made, under the provisions of Ss. 6 and 7 of the Land Acquisition Act, 1894, and an officer, for instance, the Deputy Commissioner, is directed to take order for the acquisition of the said land, it is competent to the officer, appointed in the Government notification to take order for the acquisition of the property, to direct of his subordinate officers to make enquiry and to report to him, as this is not a judicial proceeding, and such a procedure would not be illegal. It is possible that the duly authorised officer may, in such cases, adopt his subordinate's report as the award to be made under S. 11. But, in every such case, it is essential that the officer, who has to make the award under his land, should, by unequivocal words, signify, that this report was accepted by him as his award, and that his full signature should be appended to this declaration; it is not enough for him to append merely his initials to his endorsement of approval; an award bearing only his initials, does not conform to the provisions of S. 11 and is therefore, no award at all.

Where a notification, issued under Ss. 6 and 7 of the Act, authorised the Deputy Commissioner of Lahore to take order for the acquisition of the property, the person authorised to act as the Collector for the purposes of S. 7. of the Act is the Deputy Commissioner of Lahore for the time being, and that officer, and that officer alone, is competent to make an award under his hand for the purpose of S. 11 of the Act. The provisions of this section, require that a certain degree of formality shall attend the making of an award, and an award, which is under the hand of a person other than the person or official authorised to take action under S. 7, cannot be said to be under the hand of the Collector, and this too though the person purporting to make the award states that he is acting for, or on behalf of the Deputy Commissioner.

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Held, also, that an award under the Act is not "made," until it is announced or communicated to the persons interested, as, to hold that it is "made," as soon as it is signed by the Collector would, in many cases, result in grave hardship. (Rattigan and Shah Din, JJ.)

Macdonald *v.* The Secretary of State for India in Council.—19 P.L.R. 1909; 167 P.W.R. 1908; 123 P.R. 1908; 4 I.C. 914.

——*S. 11—Banjar Quadim land used for brick making—Probable future use—Principle of assessing—Compensation.*

An owner is entitled to have the price of his land fixed in reference to its situation and the probable use to which it is likely to be put in the near future. 21 P.R. 1905; 132 P.L.R. 1905, *followed*. Where, therefore, the land in suit was situated near a junction of 3 roads at convenient distance from the city and the Railway station and the advent of the Railway made it a very suitable sites for building purposes.

Held, that in view of the likelihood of its being used in the near future for building purposes its price must be assessed according to the rate of building sites. (Rattigan and Beadon, JJ.)

Secretary of State for India *v.* Nanak.—126 P.L.R. 1916; 61 P.W.R. 1916; 35 I. C. 283.

——*Ss. 11 and 18—Land acquisition—Jurisdiction of Court—Government denying title of claimant.*

Held, that the Divisional Judge is bound to decide a case referred to him under section 18 of the Land Acquisition Act when the Collector finds that the claimant has an assessable interest in the property acquired, and he cannot decline to exercise jurisdiction on the ground that the Government denies before him the title of the claimant to the property. (Johnstone and Hurry, JJ.)

Amolak Shah *v.* The Collector of Lahore.—115 P.R. 1906; 87 P.L.R. 1907; 150 P.W.R. 1906.

——*Ss. 11 and 12—(1) Provincial award—Reference to superior officer—Irregular proceedings prior to award—Jurisdiction of Civil Court—Award by Deputy Commissioner after appointment under Government Notification valid - Ibid—Ss. 23, 24—Market value—Speculative rise in value, due to contemplated use of land after acquisition—Delay in Government Notification, effect of.*

Held, (1) that a proposed award by a "Collector" specially appointed for purposes of Land Acquisition, submitted for approval and for orders as to its announcement to his superior officer (the Deputy Commissioner) under departmental rules was not an "award" within the meaning of Ss. 11 and 12 of the Act, as the writing did not show that the "Colletor" conceived himself to be setting down on paper what Government intended to pay as compensation to the owners. That the proceedings of Revenue authorities prior to the making of the award being purely administrative and in no way judicial, the irregularities in the proceedings of the Deputy Commissioner in transferring the case to himself instead of simply recording his opinion and return-

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ing the papers and again in not conforming to the strict procedure under Section 11 could not be questioned by a Civil Court; that the Deputy Commissioner, who not approving of the Collector' proposed award took the case into his own hands and later on being himself appointed by a Government Notification to take order for the acquisition pronounced an award reducing the price proposed to be paid for the land, was fully authorised to make and announce his award after he had become specially empowered to deal with the matter. Where owing to dely in the Notification under S. 6 for more than a year the market value of the lands or on near the spot proposed to be acquired had risen and a private individual had purchased certain lands at a rate far above what had obtained in previous years.

Held, that the Government is not liable to pay at the enhanced market value of the land at the date of the Notification under S. 6, where the rise in value is merely speculative due to the contemplated use of land after acquisition; that the correct way is to take the whole of the land together and to assess the plots at the rates that would have obtained if Government had never announced any intention of making a Civil Station or a Bazar. (Johnstone and Rattigan, JJ.)

Farmanshah *v.* The Secretary of State.—63 P. R. 1907.

——*S. 18—Application to collector to refer to Court, contents of—Order of Collector on revision by Chief Court.*

Held, that, a Collector making a reference, or refusing to make a reference, is acting judicially and, therefore, his proceedings are subject to revision by the High Court.

When an owner says, "I object to the award of the Collector and I wish a reference to be made to the Court," and then adds in connection with one item of the property that the compensation paid for the different classes of land is very low and also adds in connection with another item of the property that the compensation for the wells and other buildings is too low, he does give grounds for the reference. (Johnstone, C.J.)

Secretary of State for India *v.* Jiwan Bakhsh.—67 P.R. 1916; 73 P.L.R. 1917; 180 P W.R. 1916; 36 I.C. 213.

—— *S. 18—Order of Collector rejecting application for reference to the Court—Jurisdiction of Chief Court to interfere.*

Held, that the Chief Court has no jurisdiction to revise an order of a Collector under section 18 of the Land Acquisition Act whether passed by him as a Revenue Officer or Revenue Court, Robert Leslie *v.* Collector of Mergui (1 Lower Burma R. 132), *followed*. Administrator General of Bengal *v.* Land Acquisition Collector (12 Cal. W. N. 241) and Krisna Das Ray *v.* Land Acquisition Collector of Tabna [16 Cal. W. N. 827 (328)], *disapproved*. (Rattigan and Chevis, JJ.)

Rafi-ud-Din *v.* Secretary of State.—65 P. R. 1915; 144 P.W.R. 1915; 31 I. C. 76.

LAND ACQUISITION ACT, 1894, S. 18.

——*Ss. 18 and 3 (b)—"Person interested"—Meaning—Agreement to sell land acquired—Person in whose favour agreement executed—Reference at instance of—Validity of.*

Where before the acquisition under the Land Acquisition Act of a piece of land, an agreement to sell it had been executed in favour of a person who had also paid earnest money in pursuance of the agreement, held, that he was a "person interested" in the land within the meaning of S. 18 of the Act and a reference to the Chief Court at his instance, was quite competent. (Shadi Lal and Broadway, JJ.)

Chuttan Lal *v.* Mul Chand.—18 P.R. 1917; 28 P.W.R. 1917; 37 I. C. 8.

——*Ss. 18, 32—Practice—Withdrawal objection—Effect of.*

The Court is bound to decide all points the decision of which is necessary to enable it to pass orders as to the disposal of the money, including questions arising as to who was the proper heir of the claimant who had died after the desposit of money in Court. 4 C. L. J. 256, *followed.* (2) Where the money is once deposited in Court, the Court is obliged to observe the provisions of S. 32 of the Land Acquisition Act, in spite of the withdrawal of objection. (Chevis, J.)

Nihal Kaur *v.* Secretary of State.—237 P.W.R. 1912; 13 I. C. 550.

——*S. 18—Reference under—Parties.*

Held, that, in an appeal in the case of a Land Acquisition award, the only person who can be impleaded as a respondent is the Secretary of State; and if he is not made a respondent when the appeal is filed, there is in fact and in law no appeal at all so far as the respondent is concerned. (Rattigan and Beadon, JJ.)

Fakir Chand *v.* Municipal Committee of Hazro.—59 P.R. 1913; 59 P.L.R. 1913; 88 P.W.R. 1913; 18 I.C. 37.

——*Ss. 18, 19 and 54—Reference to Divisional Court after 6 weeks—Rejection of Reference—Appeal to Chief Court—Waiver of Limitation.*

More than six weeks after the date of an award under the land Acquisition Act an application was made to the Collector requiring that the matter be referred under section 18 of the Act to the Court. The reference was made in due course, but at the hearing before the Court, on objection being taken, the application was dismissed as time-barred under proviso (a) to section 18:

Held, that no appeal lay to the Chief Court from the order of dismissal.

An award signed by a Collector as Land Acquisition Officer sufficiently satisfies the requirements of the law as regards signature and official designation of the Officer making the award, for the purposes of the Act. 4 Ind. Cas. 914; 123 P. R. 1908; 19 P. L. R. 1909; 167 P. W. R. 1908, *referred to* with the remark that its head note is incorrect.

It is not open to a Collector to waive the objection of limitation, and it is always open to the Court to hold that an application to a

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Collector for reference could not form the basis of referenc under sections 18 and 19 inasmuch as it was barred by time. (Rattigan and Scott-Smith, JJ.)

Ghulam Muhyuddin *v.* The Secretary of State for India.—48 P. R. 1914 ; 208 P.L.R. 1914; 149 P.W.R. 1914; 24 I.C. 379.

—*S. 18—Reference by collector—Right of objector to argue points not raised—Records of Settlements.*

Held, that, in a land acquisition case no question for which the objector has not asked the Collector to make a reference under section 18 of Act I of 1894 to the Civil Court can be raised. (Johnstone and Chevis, JJ.)

Hafiz Anwar Ali *v.* Ram Sarup.—180 P L.R. 1914; 81 P.W.R. 1914 ; 24 I.C. 903.

—*Ss. 18 and 19—Reference to—Divisional Civil Court—Limitation Power to extend—Minority—Jurisdiction of Court—Objection to jurisdiction of Court—Objection to jurisdiction—Practice.*

The Secretary of State for India in Council is competent at any stage of the case to take objection to the jurisdiction of Divisional Court to try a reference made to it by the Collector when the reference is invalid in Law, *e.g.*, if it has been made without any application having been made by any person aggrieved by the award, or application is made after the prescribed period.

The period prescribed is in no case extendible at the discretion of the Collector. An application on behalf of a minor for reference to Divisional Court must be made within the prescribed period. 30. Bom. 275 at p. 285, *followed*. (Rattigan and Beadon, JJ.)

The Secretary of State *v.* Hakim.—244 P.L.R. 1914 ; 61 P.R. 1914 ; 158 P.W.R. 1914 ; 25 I.C. 448.

—*Ss. 18, 30, 33 and 54—Reference to Court under Ss. 18 and 30—Distinction between—Appealability—Compensation—Investment of.*

A part of the property acquired under the Land Acquisition Act was the property of *Mst.* P. a Jat widow, who had made a gift of it to H. S. The Acquisition Officer made his award in favour of H. S. One of the widow's reversioners, applied stating that H. S. was not entitled to the compensation money and on the application by S, the Acquisition Officer made a reference to the District Court under S. 30 of the Land Acquisition Act. The District Judge held that H. S. had no better title in the land acquired than the widow and consequently was entitled during the life-time of the widow only to interest on the compensation money and directed that the compensation money be held in deposit and invested and the interest thereof paid to H. S.

Held, that the decision of a Court under a reference made under S. 33 of the Land Acquisition Act is a portion of an award and as such appealable under S. 54 of the Act.

Held, also that the reference under S. 30 is made solely on the question of title by the Acquisition Officer of his own motion

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whilst the reference under S. 18 is made in the application of persons interested in the compensation money and hence the reference in this case must be regarded as one made under S. 18.

The case was governed by Ss. 61 (2) and 33 of the Act and not by S. 32. (Shadi Lal and Le Rossignol, JJ.)

Hazoura Singh *v.* Sundra Singh.—97 P.R. 1919; 53 I.C. 589.

——*Ss. 18 and 26—Reference to Court, scope of—Duty of Judge to consider question of compensation in entirety.*

When a case is referred under S. 18 of the Land Acquisition Act the whole case is referred subject to the limitation contained in S. 23 of the Act and not merely any particular objection and the District Judge is empowered indeed bound, to consider the question of the compensation awarded in its entirety. 22 M. L. J. 379, *followed*. 38 Cal. 239, *diss.* (Shadi Lal and Broadway, JJ.)

Zia-ud-Din *v.* The Secretary of State for India.—68 P. W. R. 1921.

——*Ss. 18 and 26—Reference to Court—Enquiry, Scope of.*

Certain land belonging to the appellants was acquired by Government. The special Land Acquisition Officer made a separate valuation for wells, buildings, trees and for the land, the total of the various items with 15 per cent addition amounting to Rs. 11, 613. The appellants raised objections and a reference was made under S. 18 of the Land Acquisition Act to the District Judge of Delhi, who came to the conclusion that, having regard to prices paid for lands in the immediate vicinity, the market value of the property acquired was approximately Rs. 10,000 and as that sum with 15 per cent addition amounted to slightly less than that awarded by the Land Acquisition Officer maintained the original award. Agnist this decision the present appeal was presented and it was contended that the District Judge had no power to examine the compensation awarded as a whole, but should have confined himself to a consideration of the valuation of the various parts into which it had been split up by the Land Acquisition Officer.

Held, that when a case is referred under the Land Acquisition Act the whole case is referred subject to the limitation in S. 26 of the Land Acquisition Act and not merely any particular objection and the District Judge was therefore right and indeed bound to consider the question of the compensation in its entirety. 14 I. C. 270, *followed*. (Shadi Lal and Broadway, JJ.)

Zia-ud-Din *v.* The Secretary of State for India.—1 Lah 352; 54 I.C. 920.

——*S. 18 (2) (b)—Collector's award when complete—Application for reference to Court—Limitation.*

A Land Acquisition Officer made his award on 3rd September 1909. One of the persons interested objected the next day to a part of the compensation being awarded to another claimant. But on 4th March 1910, the Collector directed the disputed sum to be

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paid to the latter. The objector on 21st March 1910, moved the Collector by an application to make a reference to the Court under S. 18 of the Land Acquisition Act.

Held, that, as the Collector's award was complete on the 3rd September 1909, as soon as he apportioned the amount of compensation among the respective claimants, and as the actual payment of the compensation money to the claimants was not necessary to the completion of the Collectors's award, the application of 21st March 1910, was out of time and therefore, barred by limitation under S. 18 (2) (*b*) of the Land Acquisition Act. (Shah Din, J.)

Miran Bakhsh *v.* Feroze Din.—203 P.W.R. 1912 ; 14 I. C. 537.

——*Ss. 23, 24 and 29—Compensation—Apportionment between Landlord, mortgagee and Tenant.*

In a land acquisition case in which the main dispute was about the apportionment of the compensation between a landlord mortgagor, mortgagees and occupancy tenants, the Civil Court decided :—(*a*) The whole compensation including price of a tree should be divided half and half between the landlord mortgagor and the occupancy tenants ; but the mortgagor should pay off the mortgagee in proportion to the land acquired. (*b*) The compensation for the well construed by the landlords' ancestors must go in full to the tenants on the condition of their digging a new well. *Held*, by the Chief Court that :—(1) The half and half rule is fair as regards the division of the price of the land and the tree plus the statutory 15 per cent. between the landlord and the tenants ; but the severance money should go wholly to the tenants. (2) As the well was construed by the landlord he is entitled to get 3|5 of its compensation as a fair and convenient proportion, on the condition of his digging a new well when required. (3) The whole of the mortgagee money is admissible against the mortgagor's son ; but as the mortgage has not appealed the lower Court's order, as it is, will stand so far as he is concerned. (4) The landlord in this case is not estopped from claiming more than ½ of the compensation of *Nandkianwala* well by reason of his previous admission as regards his share in the compensation of *Bhctawala* well. (Johnstone and Shah Din, JJ.)

Partab Chand *v.* Nathu Ram.—103 P.L.R. 1909 ; 141 P.W.R. 1909; 4 I.C. 1001.

——*S. 23—Compensation—Assessment.*

For purposes of compensation the price of the land proposed to be acquired must be fixed in reference to the probable loss which would give the owner the best return and not merely in accordance with its present use. (Abdul Raoof, J.)

Hardawari Mal *v.* Secretary of State.—64 I.C. 146.

——*S. 23 and 34—Compensation—Mode of determining the amount—Interest—Cos on reference.*

In determining compensation for property acquired by Government the Land Acquisition Act must be liberally expounded in

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favour of the public and strictly expounded as against the Government or Company taking the land.

The recognized modes of ascertaining the value of land for the purpose of determining the amount of compensation to be allowed under the Land Acquisition Act (I of 1894) are:—

1. If a part or parts of the land taken up has or have been previously sold, such sales are taken as a fair basis upon which, making all proper allowances for situation, etc., to determine the value of that taken.

2. To ascertain the net annual income of the land, and to deduce its value by allowing a certain number of years' purchase of such income according to the nature of the property.

3. To find out the prices at which lands in the vicinity have been sold and purchased and making all due allowance for situation to deduce from such sales the price which the land in question will probably fetch if offered to the public.

In the case of land in the vicinity of a town where building is going on it would be unjust to adopt the second of the above method, if there is a fair probability of the owner being able, owing to its situation, to sell or lease his land for building purposes. The value of land should be determined, not necessarily according to its present disposition, but laid out in the most lucrative and advantageous way in which the owner can dispose of it.

The market value "at the time of awarding compensation, may fairly be taken to mean "at the time when proceedings under the Act are taken."

In determining compensation allowance must be made for the owner's professional eanings being injuriously affected by the acquisition.

The owner is entitled to interest on compensation awarded to him from the date of the Collector taking possession to that of his paying the compensation into Court or the owner. A deposit in the Treasury is not enough to satisfy the requirements of the Act.

In awarding costs of a reference to Court under the Land Acquisition Act the pleader's costs should be assessed on the amount in dispute between the owner of the property and the Collector and not on the total amount allowed by Court. (Chatterji and Robertson, JJ.)

Parma Nand *v.* Secretary of State for India.—41 P.R. 1904.

— *S. 23—Market Value—Method of calculating value.*

In calculating the value of land for Government purposes, the calculation should be a prudent business calculation, and where claimants demand prices for their land as building land, they must show that it either is building land or is likely to become building land at any early date.

Where Government notifies its intention of acquiring land for a market and shortly after notifies its intention to acquire land immediately adjoining such land as a reserve for market purposes, the first notification must be deemed to have occasioned an increase

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in value in the land dealt with in the subsequent notification. But where Government requires land which is a quarter of a mile or more away from the land required for the market, no rise in value can be deemed to have taken place in such land.

Market-value cannot be calculated with mathematical precision. A certain amount of guess work and conjecture is unavoidable, but Courts should be careful not to go too far in this direction. (Johnstone, J.)

Secretary of State for India *v.* Gobind Ram.—252 P.L.R. 1911; 253 P.W.R. 1911; 11 I.C. 838.

— *Ss. 23 and 24—Compensation—Principles of assesment of.*

In assessing the price of property acquired under the Land Acquisition Act, the Act must be liberally expounded in favour of the public and strictly expounded as against the Government or Company taking the property. *3 M. and G. 155, referred to.*

The owners are entitled to have the price of their property fixed with reference to the probable use which will give them the best return. 44 P. R. 1904 ; 21 P. R. 1905; 132 P. L. R. 1905, *referred to.*

Where it was urged in claiming higher price that the land acquired by Government would become valuable as a building site and for other purposes at a near future when a new civil station would be established at the place—*Held,* that the law as laid down in section 24 (5) of the land Acquisition Act does not permit such value to be taken into consideration. (Chatterji, J.)

Zulfikar Khan *v.* The Collector of Mianwali.—90 P.R. 1905; 49 P.L.R. 1906.

— *S. 23—Market value—Costs of pleader.*

Held, that in the cases of acquisitions under the Land Acquisition Act 1 of 1894 the instances as to the rate of the sole price of the lands sold in the vicinity of the land acquired are not relevant unless these are similarly circumstanced and situated.

Held, also, that pleader's costs can be allowed to each side on the difference between the amount claimed and the amount awarded. (Scott Smith and Agnew, JJ.)

Ram Zur Singh *v.* Secretary of State.—174 P.W.R. 1913; 309 P.L.R. 1913; 21 I.C. 270.

— *S. 23—Powers of—Principle to be adopted in assessing price - Interest — Pleader's fee.*

Held, that in case of compulsory land acquisition the price should be assessed with reference to the probable use which would give the owner the best return. In fixing the price on this principle it is necessary to be guided as far as possible and reasonable by the rule enunciated by Lord Truro in *East India Docks and Birmingham Railway Company* v. *Gatiki* 3 M. and G. 155, *viz.*, that the Act should be expounded liberally in favour of the public and strictly against the Government or Company taking land. The rate at which the nearest lands with similar advantages have been sold within a short period

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before and within a few months after, the Notification for acquisition is issued, should be taken into consideration. An average struck from sales within a period of five years before the acquisition, of land situate at different parts of the village with greatly varying advantages and defects can be no satisfactory criterion of the value of the land to be acquired especially where the price has risen mainly since the last three years or so.

Held, also, that interest at six P. C., P. A. should be allowed from the date of the Collecter's taking possession on the difference between the amounts of the Collector's award and the price finally assessed.

Held, further, that in such cases pleader's fee in the Court below can be allowed at 5 P. C. on difference between the award of the Collector and that of the Judge. (Chatterji and Johnstone, JJ.)

Ram Saran Das *v.* The Collector of Lahore.—9 P.W.R. 1911; 9 I.C. 228.

——*S. 23 (i)—Value—Calculation.*

In calculating the value of a plot of land the price previously paid for a portion of the same area affords infinitely the best material which can possibly exits if the prices remain stationery. (Shadi Lal, C.J. and Harrison, J.)

Rai Bahadur Lala Narasingh Das *v.* The Secretary of State for India in Council.—(1922) Lah. 327.

——*S. 24—Agricultural land acquired for Mandi—Compensation, how determined—Proof—Sale of land requiring Sanction of Deputy Commissioner.*

Held, that:—

1. Where agricultural land is acquired for a *Mandi*, the compensation should be assessed at the amount which similar land in the neighbourhood is likely to fetch for purposes of agriculture. The purposes for which the land is required should not influence to award of compensation.

2. The fact that a shop-keeper is willing to pay a large price for a shop in a *Mandi*, or so near a *Mandi* as to enable him to enjoy the benefit enjoyed by the proprietors of the shops in the *Mandi* in the event of his being fortunate enough to receive sanction for the purchase under the Alienation of Land Act, should not be considered in assessing the value for the purposes of the Land Acquisition Act unless it is shown that the sanction would be granted for the purchase.

3. The evidence of witnesses, who merely give opinions as to the value of land or express their willingness to purchase it, should be excluded in determining the amount of compensation.

4. Where a district Board acquired land at a high price by private purchase for the enlargement of *Mandi* in order to obviate the delay caused by proceedings under the Land Acquisition Act, the fact should not be taken into consideration in assessing the value of other land subsequently acquired through Government. (Reid, C. J. and Robertson, J.)

The Secretary of State for India *v.* Basawa Singh.—17 P.L.R. 1912 Sup.; 57 P.R. 1913; 19 P.W.R. 1913; 17 I.C. 764.

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——*S. 24—Determination of amount of award—Delay between notification and acquisition—Excess area.*

In determining the amount, any claim which is not barred under S. 24 and which can be shown to be just and equitable should be considered; the delay between notification and acquisition should not be considered unless it has caused damage. Excess area not really existing but shown in records should not be paid for. (Chevis and Leslie Jones, JJ.)

Johnstone *v.* Secretary of State.—60 P.R. 1917; 42 I.C. 905.

——*S. 25—Acquisition of land on which house is built—Compensation—Mode of assessment—Re-instatement principle, if applicable.*

The original cost of the construction of a building can be taken into consideration in assessing the market value thereof. 9 Bom. L. R. 1232 33 Bom. 325; 9 C.W.N. 655, *distinguished.* 9 Bom L. R. 99; 34 Bom. 486, *followed.* (Scott Smith & Shadi Lal, JJ.)

Secretary of State for India *v.* Sohan Lal.—60 P.R 1918; 76 P.W.R. 1918; 44 I.C. 883.

——*S. 25—Collector's award—District Judge—Power to modify award.*

When a person objecting to the Collector's award under the Land Acquisition Act takes the case into the Civil Court the whole case is re-opened so far as that objector is concerned and though the District Judge cannot reduce the Collector's award it is open to him to uphold that award on the ground that though the award may be insufficient as regards certain parts of the claim it is sufficient on the whole. (Chevis and Leslie Jones, JJ.)

Johnstone *v.* Secretary of State for India.—60 P.R. 1917; 42 I.C. 905.

——*Ss. 30, 53 and 54—Acquisition—Award—Execution proceedings—Appeal Restitution—Contempt of Court—Civil Procedure Code (Act XIV of 1882), Sections 2, 244, 433 (3), 583—Suit against Ruling Chiefs—Sanction of Local Government—Procedure.*

Held, that the adjudication as to compensation or apportionment of compensation under the Land Acquisition Act, 1891, is tantamount to a decree within the meaning of section 2 of the Civil Procedure Code, though called as an award under the Land Acquisition Act, such a decree cannot be considered merely a declaratory one, and is capable of execution. When after an award has been acted upon the appellate Court modifies it, restitution ought to be ordered by the Court whose duty it was to execute the award Orders passed in execution would be appealable to the Chief Court as decrees within the meaning of sections 2 and 214 of the Civil Procedure Code, for the course of appeal is the same as that in the original proceedings. (Chatterji and Kensington, JJ.)

The Zamindars of Dhar *v.* Rana of Bhagat.—53 P.R. 1906; 103 P.L.R. 1906; 85 P.W.R. 1906.

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——S. 30—Exclusive jurisdiction to determine right to and apportionment of compensation—Civil Procedure Code, Ss. 521, 522—Separable parts of award—Void and valid portions—Court discovering before decree Competency to try suit—Dismissal of suit—Amount of compensation—Apportionment—Estoppel. (Robertson and Beadon, JJ.)

Amolak Shah *v.* Charan Das.—16 P.W.R. 1913 ; 52 P.R. 1913 ; 14 P.L.R. 1912 (Sup.) ; 17 I.C. 684.

——Ss. 30 and 54—Reference under S. 30 on question of title—Order of District Judge—Appealable. *See* Land Acquisition Act, Ss. 18, 30 etc. 97 P.R. 1919 ; 53 I.C. 589.

——*S. 31 (2)—Award by collector— Apportionment of compensation—Suit for if maintainable.*

Held, that where the award made by the Collector did not contain any adjudication of the question of the apportionment of the compensation against the claim of the present plaintiff, he was entitled to have it determined by the Civil Court under the provisions of section 31 (2) of the Land Acquisition Act. (Chevis and Abdul Raoof, JJ.)

Chandu Lal *v.* Mussammat Ladli Begam.—83 P.R. 1919 ; 18 P.W.R. 1919 ; 49 I.C. 657.

——*S. 31—Land Acquisition—Compensation—Mortgage—Right of Mortgagee.*

The mortgagee of property, a portion of which is acquired by Government, is entitled to the whole of compensation allowed by Government, when the mortgage-money exceeds the sum awarded as compensation. (Reid, J.)

Topan Das *v.* The Secretary of State for India in Council.—17 P.R. 1907; 2 P.L.R. 1908 ; 67 P.W.R. 1907.

——*S. 54—Appeal—Practice—Parties—Secretary of State the only essential and proper party.*

Held, that, in an appeal in the case of a Land Acquisition award, the only person who can be impleaded as a respondent is the Secretay of State ; and if he is not made a respondent when the appeal is filed, there is in fact and in law no appeal at all so far as the respondent is concerned. An appeal cannot be said to be presented when the memorandum of appeal ommits the name of the person who alone can be the respondent to such appeal.

There is no *duty* on the part of the Court to see that the appellant has duly impleaded the one and only person legally interested in the appeal as a respondent. That is a matter which it is the duty of the appellant to see to and if he fails to do so, he cannot be permitted to throw the blame upon the Court.

Held, also, that a respondent, who is brought on the record by an order passed against him before he was a party, is entitled subsequently to challange the validity and correctness of such order. (Rattigan & Beadon, JJ.)

Fakir Chand *v.* Municipal Board of Hazro.—59 P.L.R. 1913 ; 59 P.R. 1913; 88 P.W.R. 1913 ; 18 I.C. 37.

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——*S. 54—Appeal to Privy Council from award—*

There is no appeal to the Privy Council as of right from an award of a High Court under the Land Acquisition Act, I of 1894 *vide* Rangoon Botatoung Co. *v.* Collector of Rangoon I. L. R. 40 Cal. 21, *referred to.* (Reid, C. J. and Kensington, J.)

Mst. Shamas-ul-Nisa *v.* Secretary of State for India.—105 P.L.R. 1913; 71 P.W.R. 1913; 18 I.C. 489.

——S. 54—Application for reference out of time—Dismissal of reference—No appeal to Chief Court. *See* Acquisition Act, Ss. 18, 19, and 54.

48 P. R. 1914; 149 P.W.R. 1914; 208 P.L.R. 1914; 24 I.C. 379.

——*S. 54—Award or a portion thereof—Appeal—Order of refund.*

An order directing refund of the money paid as compensation under the Act is not an award or a portion of an award within S. 54 and hence is not appealable. But it may be revised if the order be passed without jurisdiction. (Martineau, J.)

Mst. Gobar Sultan *v.* Ali Muhammad.—3 Lah. L.J. 421; 63 I.C. 1.

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——*Abadi—Neglect to repair a fallen house—Abandonment.*

The plaintiff and Sadh sued for possession of a building site alleging that the site belonged to him and the defendant had ejected him in execution of a decree obtained against him under section 9 of the Specific Relief Act. The defendant pleaded that the suit was bared by limitation. No plea of abandonment had been set up and no issue of the subject was framed. It was found that a house on the site had been gifted to a spiritual ancestor of the plaintiff and the site was vacant for many years previous to the suit, the last house not being rebuilt after it had fallen. The plaintiff all these years lived in a *thakardwara* outside the village and the defendant, who was a neighbour, in these years used the site for tethering cattle

Held, that the suit must be decreed. It was neither barred by the plea of adverse possession, nor of abandondent, nor by the decree passed under section 9 of the Specific Relief Act. (Chevis, J.)

Lachman Das *v.* Narsingh Das—101 P.L.R. 1916; 108 P.W.R. 1916; 36 I.C. 207.

——*Abandonment—Land left in possession of persons not related to the owner—Living at a distance of 8 miles.*

Held, that, leaving land in possession of a person not related to the owner and having no concern with it for over 20 years and living at another village 7 or 8 miles off and cultivating other land there is sufficient evidence of abandonment. (Kensington, J.)

Amir *v.* Jiwan.—72 P.L.R. 1913; 33 P.W.R. 1913; 19 I.C. 3.

——*Abandonment of holding—Presumption of abandonment.*

A landowner left his village previous to 1884 when he died and the defendants adoptive father got possession of the proprietary holding. A suit by sons of the landowner in 1903 for recovery of the land was

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dismissed for default and a suit brought after their deaths by the present plaintiffs their heirs, in 1912 was also dismissed, the defendant being found to have acquired a title by adverse possession. The plaintiffs then brought the present suit for a declaration of their right to the share in the shamilat deh.

Held, that the fact of the plaintiffs ancestors having given up the whole of their holding and quitted the village for good showed that they abandoned all the rights they had in the village including rights in the shamilat. 9 P. L. R. 1907, *referred to.* (Shadi Lal and Martineau, JJ.)

Mirza *v.* Kahan Singh.—96 P.R. 1919; 52 I.C. 539.

——*Abandonment of holding—Proof—Possession of proprietor, when adverse.*

Held, that a finding as to abandonment by an occupancy tenant is not final, when such finding is based on no evidence, or on a misreading or misconstruction of evidence or of documents or is against express *prima facie* reliable evidence which by law is to be presumed to be correct in the absence of all evidence to the contrary, or which is based on a misconstruction of the provisions of the Punjab Tenancy Act. 81 P. R. 1916; 16 I. C. 887, *relied on.* (Bevan Petman, J.)

Muhammad Umar Khan *v.* Razi Khan.—2 Lah. L.J. 136; 170 P.R. 1919; 54 I.C. 873.

——*Buildings—Rent—Enhancement of—Right of some of the landlords.*

Some of several joint landlords of a shop can without the consent of others enhance the rent paid by the tenant. I. L. R. 7 Cal. 633 (F. B.); 9 Cal. 864, *followed.* I. L. R. 17 Cal. 538 and 19 Cal. 593, , *referred to.* (Clark, C.J.)

Mehru Mal *v.* Ishar Das.—159 P.L.R. 1903.

——*Cesses—Right to collect dues.*

The proprietors of a *patti* instituted, against the proprietors of another *patti*, who, by reason of an alleged acquisition of proprietary rights over certain sites in the *abadi* in question, claimed similar rights themselves, a suit for declaration that they were solely entitled to collect certain village dues.

Held, that a suit like this between parties, each of whom claims to be entitled to collect such dues, does not fall within the purview of S. 77 (3) (j), Punjab Tenancy Act.

The clause applies only to suits between the persons who claims such dues and cesses and the person by whom such dues and cesses are alleged to be payable. 204 P.R. 1898, *followed.* (Robertson and Rattigan, JJ.)

Kamiraia *v.* Lalu.—110 P.R. 1913; 39 P.L.R. 1913; 17 I.C. 907.

——*Landlord and Tenant—Contract, Breach of—Specific performance——Damages—Cause of action.*

When a person to whom a house is let for a fixed period refuses to take possession of the house and abide by his contract

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the lessor may bring a suit for specific performance or let the house to another person and sue the lessee for damages at once and need not wait till the expiry of the term of the lease.

The measure of damages is the loss of rent suffered by the landlord after deducting such as he may recover from another source and it is the landlord's duty to make reasonable efforts to secure another tenant or otherwise cover the loss unless he suses for specific performance. (Reid, C.J.)

Lachhmi Narain *v.* Mr. A. Vermon.—137 P.R. 1906; 5 P.L.R 1907; 1 P.W.R. 1907.

——*Co-sharer landlord—Joint holding—Co-sharer in possession for cultivation—Creating occupancy—Tenure in joint holding—Remedy of other co-sharers.*

Held, that, before actual partition, no co-sharer against the wishes of the other co-sharers can create an occupancy tenure in any particular field, although the former is holding it separately for the purposes of cultivation, and the latter can treat the lessor as a trespasser and can maintain a civil suit to eject him from the joint holding. (Kensington, J.)

Duni *v.* Ali Mahommad.—144 P.L.R. 1912; 8 P.W.R. 1912; 13 I.C. 857.

——*Denial of landlord's title—Punjab Court's Act (XVIII of 1884) as amended, S. 70 (1) (a)—Revision—Civil Cases—Material irregularity—Lower Appellate Court ignoring vital facts.*

When it appeared that the Lower Appellate Court had ignored vital facts in deciding an appeal the Chief Court admitted revision against the decree passed on appeal by the Lower Appellate Court.

The denial of landlord's title by the tenant is a sufficient cause of action for his ejectment. (Johnstone, J.)

Muhammad Bakhsh *v.* Faiz Bakhsh —35 P.L.R. 1910; 8 I.C. 227.

——*Denial of title—Duty of tenant to surrender possession.*

Held, that once the relationship of landlord and tenant has been established, the tenant must surrender possession before he can set up a claim to be the real owner. 123 P. R. 1919, *followed*.

Held, that it is only in very exceptional cases indeed that the High Court should exercise its revisional powers of interfering with an order of interlocutory nature and although an order passed under O. 41, R. 25, Civil Procedure Code, is strictly speaking not an interlocutory order the High Court should only interfere in an order passed under that rule in exceptional cases. (Broadway, J.)

Allah Bakhsh *v.* Lal Khan.—2 Lah.L.J. 662.

——*Denial of title by tenant—Effect—Retraction by tenant.*

A tenant cannot by any unilateral act on his part determine the tenancy, but if the landlord acquiesces in repudiation, he is entitled to eject him as trespasser. Any subsequent repentance on the part of the tenant and retraction of his denial of relationship cannot save

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him. (Rattigan and Chevis, JJ.)

Muhammad Baday Khan, *v.* Chiragh Shah.—16 P.L.R. 1912; 43 P.W.R. 1912; 13 I.C. 32.

——*Ejectment—Admission of tenancy—Production of lease if essential.*

Where in a suit for ejectment the defendant admits the term, of a lease creating the relation of landlord and tenant between the parties it is wholly unnecessary for the plaintiff to produce the document in evidence. If the document is produced, the fact that it required registration and was not registered would not discount the defendant's admission. (Shadi Lal and Martineau, JJ.)

Banarsi Das *v.* Bul Chand.—57 I.C. 262.

——*Ejectment—Notice—Denail of landlord's title before suit.*

No notice for the determination of a tenancy even it a notice is required by the terms of the lease, is necessary for maintaining a suit for the ejectment of a tenant where the tenant has before institution of the suit, denied the landlord's title and the validity of the lease. (Reid, C.J.)

Zin-ud-Din *v.* Gobind Ram.—76 P.R. 1911; 259 P.W.R 1911; 13 I. C. 323.

——*Ejectment of the landlords—Suit for—Procedure.*

For the purpose of ejectment joint landlords must either act together and unanimously, or if they cannot agree, must obtain partition and then proceed as they severally think fit, with reference to their separated shares. But a doctrine of this kind must not be so blindly applied as to occasion a miscarriage of justice. An exception to the general rule may be made when the Court is satisfied that the co-sharers who do not sue are, for some reasonable cause, not in a position to do so, that the co sharers who do sue are acting *bona fide* in the interests of the absentees as well as in their own interest; and that the tenants will not be prejudiced, on the merits of the case by the decision of the suit in the absence of some of the landlords. (C. L. Tupper, F.C.)

Chuhar Singh *v.* Jhanda Singh.—1 P.R. 1903 Rev, ; 72 P.L.R. 1903.

——*Forfeiture condition on non-payment of rent—Relief—Deposit of rent in Court—Discretion—Failure to exercise jurisdiction—Transfer of Property Act (IV of 1882), S. 114.*

Where the area leased was planted up as a garden and contained many fruit trees which were about to reach their prime, and where the landlord sought to eject the tenant under the cover of a clause contained in the lease deed providing for forfeiture in case of non-payment of rent.

Held, that the clause was objectionable and that the Courts would, under S. 114, Transfer of property Act, relieve against forfeiture

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Held, also, that the Collector's order decreeing ejectment under these circumstances is open to revision, inasmuch as he failed to exercise a jurisdiction vested in him by law, *i.e.*, the jurisdiction to grant relief against forfeiture for non-payment of rent.

As regards tenant under contract, though S. 48 of the Punjab Tenancy Act does not specifically provide for relief against forfeiture for non-payment of rent, yet that section does not bar or exclude relief against forfeiture for such non-payment, if under the general law governing lease contracts, such relief is claimable by the lessees.

Though the Transfer of Property Act has no statutory operation in the Punjab, such of the sections as lay down principles of law in consequence with equity, good conscience and justice should be followed by the Courts. 85 P.R. 1902, *referred to.* (Fenton, F.C.)

Aziz-ud-Din *v.* Guru Bhagwan Das.—36 P.L.R. 1913; 6 P.R. 1912 Rev.; 17 I.C. 991.

——*Forfeiture—Breach of covenant—Sub-letting—Right of re-entry reserved—Transfer of Property Act, S. 108 (J) and 111 (g).*

Held, that in the absence of a covenant to the contrary a tenant is authorized to sub-let.

Held, also, that a breach of a condition of a lease does not effect its forfeiture unless the lease expressly so provides.

Held, further, that the words *'dokandari khud'* (for the purposes of his own shop business) standing alone in the lease do not mean that sub-letting was prohibited. 14 P.R. 1898; 22 Mad. 157; 28 All. 400, *referred to.* (Reid, C.J.)

Allah Ditta, *v.* Farz Bibi.—106 P.L.R. 1914; 35 P.W.R. 1914; 33 P.R. 1914; 23 I.C. 395.

——*Forfeiture—Denial of title—Lease and permanent tenancy distinction between.*

Plaintiff, a member of the proprietary body of Charsadda, sued the defendants, non-proprietors, for possession of a plot of land situated in the village *abadi* on which the latter had built certain *mianas*, on the allegation that they refused to pay the customary dues exigible from tenants of their status;

Held, that the land in question was admittedly *shamilat* when it was first occupied by the predecessors in interest of defendants, and that plaintiff had failed to prove that the general custom as to ejectment does not apply in the present case. 43 P.R 1912; 6 P.W.R. 1912; C.A. 31 of 1909, *referred to.* (Barton, J.C)

Abdul Manan *v.* Sahbaz.—169 P.L.R. (N.W.F. P.) 1914.

——*Forfeiture—Denial of title by occupancy tenant.*

In a previous suit by the landlords in the Revenue Court for enhancement of rent the occupancy tenants denied the relationship of landlord and tenant and claimed to be full owners. The Revenue Court thereon referred the parties to a Civil Court and the plaintiffs relying on the denial of the defendant's occupancy *status* sued for

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their ejectment on the ground that they were trespassers. The defendants then admitted that they had only an occupancy *status*.

Held, that the denial of the landlords' title should not in the circumstances of the case be held to cause the forfeiture of the tenants' occupancy rights. 65 P. R. 1885; 6 Cal. 55 and 436; 8 Cal. L. R. 150; 80 P. W. R. 1910; 34 Cal. 922; 2 Cal. W. N. 292 and 755; 34 Mad. 161, 165, *distinguished*. (Le Rossignol, J.)

Fakir *v.* Wazir Khan.—32 P.R. 1918; 45 I.C. 105.

——*Forfeiture—Denial of title—No denial in written statement—Effect of—Proof of forfeiture, if essential.*

A denial by a tenant of his landlord's title causes a forfeiture of the tenancy. In a suit in ejectment based on a forfeiture by denial of title, the defendants did not deny in their written statement the allegation as to denial of title. *Held*, that inasmuch as the plaintiff's allegation that the defendants were denying their title as owners had not been traversed in the statement of defence, it was not necessary for the plaintiffs to give evidence in support of their allegation and that the defendants failing in their other pleas were liable to be ejected. (Bevan Petman, J.)

Khem Singh *v.* Ali Sher.—8 P.W.R. 1920; 54 I.C. 263.

——*Lease—Tenant building structure on land adjoining demised land—Forfeiture of tenancy—Condition and terms of the lease.*

Where a lease provided that the lessee should not erect any structure on the portion adjoining that leased out without the lessee's permission, *held*, that by the erection of new structures without permission, the lessee did not forfeit his tenancy as the provision relating to non-interference was not a condition of the lease, but only its term.

A forfeiture may be incured for a breach of any convenant in case the lease contains a condition or proviso for re-entry for a breach of such covenant 26 M. 157; 28 A. 400, *referred to*. (Lal Chand, J.)

Miran Bakhsh *v.* Aziz Bakhsh.—53 P.R. 1908; 106 P.W.R. 1908.

——*Lease—Non-agricultural lease.*

Where a tenant has no right of occupancy, and no lease or special terms, he may be given notice to quit and such notice cannot be held to be a bad and insufficient notice, merely because it holds out an offer to the tenant to remain on fresh terms from a given date, if the tenant prefers that alternative, provided always that the notice is clear and definite in its terms, which must be such as to terminate the current tenancy.

A notice to quit, with an offer of the alternative of staying on on fresh terms, such as pay a higher rent, in a notice which is clear and unmistakable, is sufficient to terminate the tenancy on the date fixed, if the notice given is not defeasible on any other ground. Whether the notice is of such a nature in each particular case a question of fact. When in a notice to quit with an offer of staying on an enhanced rate of rent has been given and the tenant does not

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vacate, it will depend upon the facts disclosed in each case, whether the tenant is to be presumed to have accepted the terms offered, in which case rent would be decreed in accordance with such terms, or it may be held that no such consent can be presumed, but that, either owing to insufficient time granted, or for other sufficient cause, the tenant has not vacated but has held over contumaciously. In such a case the Court would award a reasonable sum for use and occupation. In considering what sum should be allowed for use and occupation, or for damages for contumacious holding over, the whole circumstances of the tenancy and the sufficiency in point of time of the notice, may properly be taken into consideration. As to what are reasonable damages the penality of double the rent may sometimes be taken as a fitting standard.

If the terms of the existing tenancy do not indicate the period of notice required, the notice must be such as is reasonable in each particular case, and the fact that the buildings themselves or their materials belong to the tenant is a factor to be taken into account should that be found to be the fact.

Where a notice required the tenant to vacate the house rented by him on or before a date mentioned therein and stated that in case of default, after the said date and until further notice, the rent would be a sum of money stated therein. *Held*, that the notice was clearly calculated to terminate the old tenancy from the date given in it. (Clark, C. J. and Robertson, J.)

Pirbhu Dial *v.* Ram Chand.—42 P.L.R. 1904; 5 P.R. 1904.

—*Notice to quit—Tenancy for a year—Notice unnecessary.*

The law with regard to notice to quit in connection with tenancies is that no such notice is necessary to determine a tenancy for a fixed period as a demise for a year. (Scott Smith and Leslie Jones, JJ.)

Ram Chand *v.* Mewa Ram.—3 P.R. 1918; 44 I.C. 213.

—*Notice to quit—Validity of—Notice given by managing members—Notice to quit coupled with a claim for double rent on refusal to vacate validity of—Sub-tenant paying rent to Landlords and recognising them, if can resist suit for ejectment by landlord on the ground of want of private; contract—T. P. Act, S. 116.*

On the death of the owner of a house which had been let to a tenant and had been sub-let by him to defendants the sons of the owner served on the sub-tenants a notice to quit and sued to eject them.

Held, (1) that the notice to quit which was given by the sons of the deceased owner was valid and that the grandsons of the owners were not co-parceners with their fathers and even if they were fathers as managers were competent to give the notice of ejectment.

(2) that the notice to quit was valid and legal notwithstanding the addition of a clause that if the tenant did not vacate, he would be liable to pay an enhanced rent;

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(3) that the sub-tenants having themselves recognised the plaintiffs as landlords and paid them rent, could not defeat the suit oh the ground that there was no privity of contract between them and the plaintiffs and,

(4) that there was a monthly tenancy established under S. 116 of the T. P. Act, and that a fifteen day's notice was sufficient. (Martineau, J.)

Muharram Ali Chishti *v.* Bansi Lal.—34 P.R. 1919; 51 I.C. 121.

——*Notice by tenant—Tenant not vacating leasehold property on expiry of term of notice given by him.*

Held, that when a tenant is unable to give to the landlord possession of the leasehold property on the expiry of the term mentioned in the notice given by him to the landlord intimating to him that the property would be vacated on a certain date, the latter is entitled to a fresh notice or rent for not giving the second notice. The mere fact that he gets partial possession on the expiry of the notice or re-enters the vacant property after the tenant has finally left the same does not disentitle him from claiming rent for fresh notice not being given to him. (Williams, J.)

Niadar Mal *v.* Mr. E. N. W. Lewin.—49 P. R. 1910; 188 P. L. R. 1910; 131 P. W. R. 1910; 8 I.C. 355.

——*Occupancy rights—Abandonment.*

An occupancy tenant cannot be said to have abandoned his holding merely because he had transferred it by mortgage, which he subsequently redeemed, and attempted to sell against the rights of the landlords. (Robertson and Rattigan, JJ.)

Mit Singh *v.* Muhammad.—36 P L.R. 1906.

——*Occupancy rights—Alluvion and Dellvion—Abandonment.*

Held, that the general rule in the Punjab is that an occupancy tenant does not lose his right by reason of the land of his holding being sub-merged ; a custom to the contrary may be proved, but such a custom is plainly inequitable and very strict proof of it should be required before it is acted upon. *Held*, that a custom contrary to the General Rule was not found to exist in respect of land in Alwalpur village in the Hushiarpur District but it was proved that the tenants had abandoned their occupancy rights by failing to cultivate the tenancy without sufficient cause for more than one year. 19 P. R. 1883 ; 122 P. R. 1876 ; 59 P. R. 1877 ; 96 and 127 P. R 1879 ; and 152 P. R. 1888, *followed*. (Tupper, F.C.)

Roshan *v.* Pohu.—8 P.R. 1901 Rev. ; 54 P L.R. 1901.

——*Landlord and Tenant—Occupancy rights—Succession religious institution.*

Held, that though a *chela* cannot succeed to the occupancy rights of his *mahant* under Section 59 of the Punjab Tenancy Act, yet when the occupancy rights vest in a religious institution and on the death of the *mahant* his *chela* succeeds to the *gadi* : the occupancy rights are not extinguished but he succeeds to them in his representative capacity as *mahant* of the institution, (Gordon Walker, F. C.)

Sher Singh *v.* Saya Ram Das —2 P.R. 1907 (Rev.); 36 P.L.R. 1907.

LANDLORD AND TENANT—OCCUPANCY RIGHTS.

——*Occupancy rights—Survivorship—Recognition by landlord of right as heir of deceased tenant.*

When a person acquires a right of tenancy and joins with him his wife's brother's son in cultivation, on the latter's death his agnates do not succeed to the holding as his heirs for it was not acquired by their and the deceased's common ancestor. They do not acquire the right by the landlord's recognising it against the surviving tenant who was joint with the deceased. 159 P. R. 1879; 109 P. R. 1894 (F. B); 4 P. R. 1880, *referred to*. 76 P. R. 1907; s. c. 32 P. L. R 1908, *distinguished*. (Reid, C. J.)

Sardar Ali *v.* Muhammad Ali.—23 P. L. R. 1910; 6 I. C. 499.

——*Occupancy rights—Takiadar—Erection of pacca mosque without consent of proprietors—Injunction.*

A takiadar is not entitled to build a pacca mosque on any part of the takia land in his possession as an occupancy tenant without the consent of the proprietors and he can be restrained by an injunction from so doing. (Scott Smith, J.)

Sawad *v.* Mehr Din.—108 P.W.R. 1918; 45 I.C. 963.

——*Occupancy tenants—Landlord's rights to share in kunkar.*

In a suit filed by the landlord to which the Government was made no party for the price of kunkar taken by occupancy tenant paying *batai, held*, that in the case of *batai* grazing land kunkar should be shared between landlord and tenant in the same proportion as the crop is shared because the loss of a possible crop in the land from which kunkar is taken is the measure of the loss sustained by the parties by land being used for quarrying instead of for agriculture. (Tupper, F. C.)

Ghulam Hussain *v.* Aziz Bakhsh.—9 P.R. 1901 Rev.; 82 P.L.R. 1901.

——*Occupancy tenant—Trees in holding of—Rights of landlord and tenant in—Kikar trees at Mauza Fatiehpur—Suit by occupancy tenant for price of, trees cut down by landlord—Maintainability.*

A proprietor is not entitled in the absence of reliable evidence as to his right either by custom or otherwise to enter upon the land occupation of a hereditary tenant, and cut and sell the trees growing thereon without the said tenant's consent: but this only means that the tenant is entitled to be safeguarded in the exercise of certain rights of user, not that he can claim the price of a tree which the landlord has cut.

Quaere:—Whether the legal position would be different if the tree cut were a fruit tree.

A landlord is not entitled to cut down trees on a tenancy held by an occupancy tenant without the consent and contrary to the interest of the tenant. This principle is fully applicable to kikar trees standing upon the lands of occupancy tenants at Mauza Fatiehpur. (Maynard, F. C.)

Pokhar Das *v.* Amir.—5 P.R. 1917 Rev.; 3 P.W.R. 1917 Rev.; 1921 L.L.T. 27; 41 I.C. 907.

LANDLORD AND TENANT—PERMANENT TENANCY.

— *Permanent tenancy—Evidence—Non-liability for enhancement of rent—Rights of permanent tenants—Buildings.*

In the absence of direct evidence, the following facts sufficiently prove permanent tenancy of vacant land : (*a*) Long possession at uniform rent; (*b*) Erection of expensive buildings without interference for many years by the landlord; (*c*) Transfers by sale, gift, mortgage and accession ; (*d*) Several receipts of rent in which it is described as *danami* or permanent. (*e*) Succeeding of many tenants of one locality in defeating ejectment suits brought by the landlord who had almost simultaneously let that locality and several other localities to different tenants for settling there.

In the case of permanent tenancy at fixed rate of rent, no enhancement can be allowed.

Permanent tenants of sites which are let for building purposes cannot be restrained from building or re-building their house thereon, in the absence of any express conditions to the contrary (Shah Din and Beadon, JJ.)

Abdul Karim *v.* Haji Allah Bakhsh.—197 P.W.R. 1912; 209 P.L.R. 1912; 121 P.R. 1912; 17 I.C. 208.

— *Permanent tenancy—Evidence of—Presumption.*

Held, that the elements essential to raise the presumption of a permanent tenancy, *e. g.*, (i) fixity and uniformity of rent (ii) transfer and devolution of interest for a long time without objection by the paramount owner, etc. etc, do not exist in this case. 15 I. C. 110; 15 C. L. J. 220; 13 I. C. 606; 34 C. 902 (P. C.) ; 121 P. R. 1912, *referred to.*

Held, also, that where the Lower Appellate Court has after full consideration of all the evidence, come to the conclusion that it falls short of establishing a permanent tenancy, such finding is one of fact and cannot be interfered with in second appeal. (Broadway and Abdul Raoof, JJ.)

Ram Sahai *v.* Mahomed Sadiq.—4 Lah.L.J. 311.

— *Permanent tenancy—Rent not to be raised so long as tenant kept the property—T. P. Act, S. 105—Principal applicable—Pleadings—Court not at liberty to go beyond.*

The defendant offered to take certain shops from the plaintiffs on lease, on the condition that the rent proposed should not be raised so long as the defendants kept them, the plaintiffs agreed by letter to rent the shops to the defendants on the proposed rent *per* month, to be paid regularly monthly. The plaintiffs themselves were lessees of the shops for a fixed term of twenty years. The defendants did not take the shops for agricultural or manufacturing purposes, and pleaded that they were entitled on the agreement to keep the shops as long as they liked :

Held, that the plaintiffs did not let out the shops to the defendants upon an agreement that the latter should occupy them for as long as they liked or for the period of the plaintiffs' own term of lease.

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The principle embodied in section 105 of the Transfer of Property Act, 1882, applied to the case, and the Courts were bound to presume that the tenancy was from month to month. The plaintiffs consequently had a right to eject the defendants after serving them with a valid notice to quit. 33 P. R. 1898, *referred to.*

According to the pleadings of the parties the Court was not at liberty to fix a reasonable term of tenancy. (Shah Din and Scott Smith, JJ.)

Jamasjee Boga *v.* Duni Chand.—180 P.L.R. 1913; 120 P.W.R. 1913; 19 I.C. 493.

— *Question of title—Rent suit—Tenancy proved.*

If in a rent suit, the plaintiff proves that the defendant is his tenant for the period for which the rent is asked for, they can claim rent from the defendant for that period, no matter who the owner may be and no question of title arises. When the tenancy is proved the defendant cannot question the plaintiffs title. (Chevis, J.)

Labhu *v.* Mool Chand.—3 Lah.L.J. 335; 60 I.C. 319.

— *Relationship—Denial of—Burden of proof—Contumacious—Possession—Damages.*

It is settled law that when the relationship of landlord and tenant has once been established it lies upon the defendant, particularly if still in possession of the premises, to prove that the relationship has ceased to exist. 4 Cal., 340, *referred to.*

Held, that double the original rent was a fair measure of what should be allowed to the plaintiff as damages for the contumacious possession of the premises by defendant (Robertson, J.)

Qamar-ud-Din *v.* Hasan Ilahi.—140 P. L. R. 1906.

— *Relationship—Lease—Premises in occupation of tenant—Lessee and sub-tenant.*

Held, that where a lessee accepts the lease of premises a portion of which is already in the occupation of a tenant the later becomes the sub-tenant of the former; but lessee's giving back its possession to the lessor at expiry of the lease amounts to entire vacation of the premises and the former tenant again becomes the sub-tenant of the lessor. (Shah Din and Beadon, JJ.)

Naidar Mal *v.* Borrooah and Co.—30 P. L. R. 1914; 6 P. W. R 1914; 23 I.C. 359.

— Relationship—Mortgagor in possession under mortgagee—Mortgagor, if tenant. *See* Jurisdiction, Civil and Revenue Courts.

9 P.R. 1913 (Rev.); 82 P.L.R. 1914; 22 I.C. 656.

— *Relationship—Mortgage with possession—Mortgagor holding under mortgagee.*

In a suit for possession of revenue paying land mortgaged to plaintiff with possession by the defendant. *Held*, that a finding the effect that A is the mortgagee and he has paid consideration of the mortgage cannot be challenged in second appeal. *Held*, also, that in the absence of evidence to prove relationship of landlord and tenant

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the mere fact that land is mortgaged with possession and the mortgagors hold it under the mortgagee does not create the relationship of landlord and tenant, consequently a suit for possession of such a land is cognizable by a Civil and not a Revenue Court. (Johnstone and Shadi Lal, JJ.)

Shadi Beg *v.* Ahmad Khan.—211 P.L.R. 1915; 168 P.W.R. 1914; 27 I.C. 446.

——*Rent, abatement of—Landlord failing to repair premises—Condition to pay enhanced rent—Penalty.*

Held, that if a landlord fails to repair the demised premises according to the terms of the lease and the tenant is thereby deprived of the use of a portion of it and is also put to loss and inconvenience the latter is entitled to deduct from the rent a reasonable amount with regard to the non use, loss and inconvenience.

Held, that a condition to pay enhanced rent in default of regular payments is penal. (Shah Din and Beadon, JJ.)

Nadar Mal *v.* B. Borrooah & Co —26 P.L.R. 1914; 5 P.W.R. 1914; 23 I.C. 358.

——*Rent, enhancement—When one of the landlords is competent to sue for whole or a part of rent or enhance it.*

Held, that, when a landlord sues for the entire rent of a building but it is found that he is entitled only to a share of the rent, the suit must be dismissed unless his co-sharer landlords are made parties to it or an arrangement is proved between the landlords and the tenant that the latter should pay each landlord his proportionate share of the entire rent. I. L. R. 31 Cal. 70, *followed*.

Held, also, that no general hard and fast rule can be laid down that one of the co-sharer landlords cannot sue for the enhancement of his share of the rent, but this is a question for determination of the Court according to the circumstances of each case. 5 Cal. 574, *dissented from*. (Scott Smith, J.)

Ruldu Ram *v.* Aya Ram.—82 P.W.R. 1910; 7 I.C. 351.

——*Rent, liability for—Attachment of tenant's goods in execution of creditor's decree—Second creditor putting forward prior claim and obtaining sale-proceeds of the attached goods—Goods remaining stored in the house all along.*

In execution of a decree against a person, who was occupying a house as a tenant, his property was attached and locked up in the house by the *nazir* of the executing Court. A creditor, other than the decree-holder, put forward a preferential claim to the attached property on the basis of a mortgage of that property and obtained all the money realized by auction of the attached property. The landlord sued the tenant and the decree-holder for rent for the period during which the property remained locked up in the house.

Held, that (1) as the house remained under lock and the tenant could not enter it, he was not liable for the rent;

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(2) also the decree-holder, in execution of whose decree the property was attached and locked up in the house, was not liable for the rent. (3) granting that the *Nazir*, when he attaches property, does so as the decree-holder's agent, still when a creditor with a prior claim steps in and ousts the attaching creditor, he must be regarded as taking over the liabilities, including rent due for the storing of the property from the time of attachment to sale. (Chevis, J.)

Grose Jones *v.* A. Cumper.—183 P.W.R. 1911 ; 10 I.C. 885.

——*Rent—Liability—House fallen in earthquake.*

Held, that the judgment of a Court of Small Causes is liable to be set aside on revision under Section 25 of Act IX of 1887, if it : (1) Assumes the existence of some facts : (2) Refuses to receive and consider the pleas of the defendants : (3) Omits to decide all material points in dispute.

—*Held*, also, that a tenant cannot be made liable for the rent of house let to him, if it falls on account of earthquake and rain *i. e.* though no fault of his own. (Scott Smith, J.)

Pir Bakhsh *v.* Hira Lal.—146 P.L.R. 1914; 54 P.W.R. 1914; 25 I.C. 26.

——*Rent paid by tenant to landlord's widow after his death—Discharge—Claim by executor of the Will of the landlord—Interest.*

The defendant rented a house from the landlord at Rs. 150 a month. The landlord raised the rent to Rs. 2,000 per annum. The rent was paid up to the date of the landlord's death to him. After his death he made one payment towards rent of Rs. 1,000 to his widow and obtained her verbal consent to a reduction to Rs. 145 per month. About one year after the payment of Rs. 1,000 to the widow a notice was given by the executors named in the Will left by the landlord to pay the rent to them. The defendant paid nothing to the widow of the executors after the notice was received by him and expressed his willingness to pay the rent to whomsoever it might be due. On the executors suing for the arrears of rent due at the rate Rs. 150 per month with interest the Court gave a decree at Rs. 145 per mensem deducting Rs. 1,000 paid to the widow.

It was contended for the executors on appeal that the claim should have been decreed in full.

Held, that the judgment disallowing interest was right but the plaintiffs were entitled to decree at the rate of Rs. 150 per month without the deduction of Rs. 1,000, allowed by the lower Court. The defendant must be presumed to have been aware that he was under no obligation to pay the widow, or any one else who did not produce a certificate or probate or letters of administration, or some authority to collect the debts due to the deceased landlord. As he was under no obligation to pay the widow and demanded no authority, the mere neglect on the part of the plaintiffs to give notice of their claim did not debar them from making it subsequently. (Chatterjee and Robertson, JJ.)

C. Golak Nath *v.* G. Craddock.—72 P.R. 1903; 164 P.L.R. 1903.

LANDLORD AND TENANT—SALE.

——*Sale of share in joint occupancy—Holding by one of several co-tenants to one of several co-landlords—Incompetency of his reversioner to consent it.*

A sale by one only of several co-tenants to one of several co-landlords of a specific portion of joint occupancy holding which had fallen to the vendor's share in a private partition is valid and it cannot in any way be contested by any reversioner; but at the time of regular partition of the holding either between the remaining joint tenants or the landlords the vendee's position will be exactly the same as that of the vendor. 31 P. R. 1896; 24 P. R. 1902, *followed.* (Chevis, J.)

Gurdit Singh *v.* Musa.—66 P.W.R. 1917; 137 P.L.R. 1917; 41 I.C. 301.

— Sanjidar, *position of—Denial of owner's right by* sanjidar—*Repudiation—Acquiescence by landlord—Suit by landlord for ejectment as trespasser*—Sanjidar *resiling from repudiation—Liability to eviction—Grant of* muafi *right by Government—Effect on landlord's suit.*

A *sanjidar* is a person who performs certain services in connection with *takyas* and in consideration thereof is given certain land to hold as a tenant under the owners. Although a tenant cannot by any unilateral act on his part determine a tenancy that subsists between him and his landlord yet if the landlord acquiescense in the tenant's repudiation of that relationship, the landlord is entitled to evict the former tenant as a mere trespasser and to apply to the Civil Court for his eviction as such. It is not open to the Courts to hold that a contractual relationship which is disowned by both parties still subsist as between them, at all events so far as those parties are concerned. A *sanjidar* under the plaintiff was granted certain *muafi* rights by Government.

In a suit in 1907 the *sanjidar* filed a written statement in which he repudiated the relationship of landlord and tenant which plaintiffs alleged to subsist between them and him, and asserted that he himself was the full proprietor of the property held by him. The plaintiff accepted this repudiation of the relationship and sued to evict the *sanjidar* as a trespasser. The *sanjidar* gave up the position adopted by him in the former suit and in the prereut suit admitted plaintiffs' proprietary rights claiming to be a *sanjidar* not liable to ejectment. *Held, (1)* that the plaintiffs were entitled to eject defendant. The cause of action accrued to the plaintiff upon the denial by defendant of their title as owners and his belated repentance could not put an end to the right which accrued to the plaintiffs on that cause of action (2) that the fact that the defendant was granted *muafi* rights by Government did not debar the plaintiffs from suing for his eviction because they were in no way concerned with what occurred between Government and the defendant. (Rattigan and Chevis, JJ.)

Muhammad Badar Khan *v.* Chiragh Shah.—16 P.L.R. 1912; 43 P.W.R. 1912; 13 I.C. 32.

LANDLORD AND TENANT—SUIT.

——Sub-tenant of landlord—Vacation of premises by lessee—Effect on sub-tenancy. *See* Landlord and Tenant—Relationship.

5. P.W.R. 1914; 26 P.L.R. 1914; 23 I. C. 358.

——*Suit by mortgagee's heirs to recover possession of land from mortgagor's heirs on failure to pay stipulated rent—Omission to apply for mutation of names—Effect of.*

By a deed of mortgage, certain land was mortgaged with possesion and the mortgagor agreed that for a term of six years he would hold as tenant under the mortgagee and pay rent at a certain rate. In default of payment of rent, he was to pay interest at a certain rate, and in default of redemption in six years, the land was considered to be sold. No interest or rent had ever been paid nor had the mortgagee applied for mutation of names in his favour, although he was bound to report the acquisition of his right by S. 34 of the Land Revenue Act. After the death of the parties to the original transaction and after 12 years had elapsed, during which no action had been taken on the mortgage, the mortgagee's heirs sued the mortgagor's heirs for possession under the deed. *Held*, that the mortgagor's heirs did not occupy the postion of mere tenants of the mortgagee and that the plaintiffs were not entitled to be put in possession as landlord, inasmuch as the mere execution years ago of a document of that character not acted upon in any way and not even brought to the notice or the revenue authorities could not be held to alter the status of the owner into that of the tenant of the mortgagee. (Wilson, F. C.)

Nizam *v.* Budhan—6 P.W.R. 1908 (Rev.); 1 P. R. 1908 (Rev.)

——*Tahzimni—Nature of the tenure—Tenant denying his landlord's title—Such denial operates as a ground for forfeiture of the tenancy.*

Held, that a tenant repudiating his landlord's right and setting up an adverse title can be ejected irrespective of the period during which he may have been in possession and that a lease of *tahzimni*, though it is in the nature of a permanent lease, is liable to forfeiture under the Transfer of Property Act if the tenant denies the title of the landlord. 19 P. R. 1875, *distinguished*. 12 W. R., p. 495; 23 W. R. p. 359; 8 Cal. 960, *referred to*. 8 C. L. R 150, *followed*. (Anderson. J.)

Jalal Din *v.* Ramzan.—80 P.W.R. 1910; 6 I.C. 1010.

——*Tenant's goods attached in execution of a Creditors decree and locked up in the house occupied by him—Accused creditor putting forward a prior claim and obtaining sale-proceeds of the attached goods—What person liable to pay rent for the period during which goods remained stored in the house.*

In execution of a decree against a person, who was occupying a house as a tenant, his property was attached and locked up in the house by the *nazir* of the executing Court. A creditor, other than the decree-holder, put forward a preferential claim to the attached property on the basis of a mortgage of that property

and obtained all the money realized by auction for the attached property. The landlord sued the tenant and the decree-holder for rent for the period during which the property remained locked up in the house.

Held, that (1) as the house remained under lock and the tenant could not enter it he was not liable for the rent. (2) also the decree-holder, in execution of whose decree the property was attached and locked up in the house, were not liable for the rent, (3) granting that the *Nazir*, when he attaches property, does so as the decree-holder's agent, still when a creditor with a prior claim steps in and ousts the attaching creditor, he must be regarded as taking over the liabilities, including rent due for the storing of the property from the time of attachment to sale. (Chevis, J.)

Crose Jones *v.* Cumper.—183 P. W. R. 1911; 10 I. C. 885.

— *Under proprietary rights—Inferior proprietorship—Ala and Adna maliks—Right to share of produce—Onus of proof.*

In a suit for declaration by plaintiffs that they were adna proprietors and in possession of the land in suit and the defendants were merely ala proprietors entitled to receive malikana dues at 25 per cent, of the land revenue, it was found that the land in dispute had been entered in the successive settlement records as the property of the defendants, whose names were written across both the columns relating to ala and adna maliks.

Held, that the onus was on the plaintiffs to established their claim to inferior proprietorship and to prove that the defendants were merely superiors proprietors entitled to recover only 25 per cent on the land revenue; that the mere fact that the tenants had been located by the village officers was no adequate ground for depriving the defendants of their right of ownership when the entries with regard to that matter had long been in their favour; and that the plaintiffs having failed to discharge the onus that lay on them the defendants were entitled to the ownership both *ala* and *adna* of the land in suit. (Scott Smith and Shadi Lal, JJ.)

Ahmad Yar *v.* Muhammad Khan.—63 P.W.R. 1918; 44 I. C. 534.

— *Whether a tenant whose lease has determined can evict a landlord.*

Held, that a tenant whose lease has determined cann t evict a landlord legally in possession of the property even if that landlord has been let into possession by the quondam tenant. 37 A. 557 (P.C.); 55 I. C. 353; 123 P. R. 1919, *referred to*. (Le Rossignol and Wilberforce, JJ.)

Mumtaz *v.* Naurang.—3 Lah.L.J. 227.

— Wajib-ul-arz, *1884—Tenant's right to cut down trees with landlord's consent—Refusal of consent, grounds for.*

A clause in Wajib-ul-arz of 1884 provides that the tenants can with consent of, and after informing the landlords, cut trees situated in their court-yards, fields, when required for agricultural implements used or for the repairs of dwelling houses. The intention of Wajib-ul-arz

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is that the tenants should ordinarily be entitled to cut down trees for the purposes mentioned, but that the landlord should have the opportunity and the right to prevent the unjustifiable exercise of this power, or its abuse, and not that he should be entitled to forbid the tenant to exercise the right at all, without assigning any reason at all. (Wilson, F. C.)

Subhan *v.* Niamat Khan.—4 P.W.R. 1908 Rev.; 2 P. R. 1908 Rev.

LAND SUIT.

——*Claim for a share of produce on account of abiana—Right to recover abiana.*

Held, that a suit in which the plaintiff claims a share of produce on account of *abiana* is a "land suit" within the meaning of Section 40 of the Punjab Courts Act.

Held, also, that the plaintiff had established that the canal in question in the suit was re-adopted from an ancient water-course by his father and that the plaintiff had alone cleared and kept it in order and that he was entitled to realize *abiana* from the defendants. (Anderson and Harris, JJ.)

Sher Shah *v.* Natha Singh.—180 P.L.R. 1901.

LAND TENURE.

——*Makbuza tenure—Meaning of public purpose—Octori post.*

The *makbuza* tenure by which the State or a public body, such as the District Board, may, with the consent of the owner take possession of land free of cost for public purposes, though not definitely recognised by the Civil Courts exists as a custom beyond doubt in the Delhi District, one of its cardinal principles being that the State or public body must return the land, if it is no longer utilized for a public purpose. The use of the land held by a Municipality on a *mukbuza* tenure for building an octroi post is clearly a public purpose. (Rattigan and Beadan, JJ.)

Sanghan Lal *v.* The Municipal Committee of Delhi.—101 P. L. R. 1914; 51 P. R. 1914; 22 I. C. 824

——*Sanjidar—Service grant of land on condition of service—Failure of guarantee to perform services personally—Effect of.*

Held, that Sanjidar loses his rights if he performs services by representative. Where the proprietors of a village make a grant of land to a Brahmin conditionally on his performing certain services, the gift can hold good only so long as he or his direct descendants perform the services required of them personally. It is not competent for either of them to have the services performed by any substitute to whom he or they select. (Rattigan, J.)

Faqiria *v.* Sabha.—18 P. W. R. 1911; 9 I. C. 925.

——*Construction—Specification of share—Joint and indivisible contract—Rights of lessees—Possession of part of land leased—Right of some*

LEASE—CONSTRUCTION.

lessees to enforce entire contract—Specific performance—Suit—Maintainability of.

Where two out of eleven co-promisees who had jointly entered into a lease with certain person, sued for the possession of the lands leased, impleading as defendants their joint lessees who colluded with the lessors and refused to join with them as co-plaintiffs.

Held, that the plaintiffs were not only entitled but obliged to sue for the possession of the whole land. (Reid, C. J. and Rattigan, J.)

Muhammad Ali *v.* Muhammad Shah.—57 P.R. 1911; 242 P.W.R. 1911; 49 P.L.R. 1912; 12 I.C. 850.

——*Contract of lease post poned—Specific performance—Right of co-lessee.*

Held, that, a completed contract of lease is an executed contract and not merely an executory contract although the commencement of the lease has been postponed to a future date. A suit for specific preformance is not necessary in regard to such a lease. (Shah Din and Chevis, JJ.)

Mihan Khan *v.* Muhammad Bakhsh.—97 P. L. R. 1913; 66 P. W. R. 1913; 18 I. C. 496.

—— *Convenants against sub-letting—No right of re-entry of. See Landlord and Tenant—Forfeiture*

35 P.L. R. 1914; 33 P. R. 1914; 106 P. L. R. 1914; 23 I. C. 395.

——*Lease by mortgagor—Mortgagee's right to enhance rate of rent—Liability of surety.*

In this case the mortgagor executed to the mortgagee a lease of the mortgaged property for a term less than a year on a rent which was equal to the interest due on the mortgage. A surety bound himself to pay the rent agreed to in the lease on the failure of the mortgagor to make the payment. Under the mortgage deed the mortgagee had the right to take actual possession if the defendant failed to pay his rent. After the expiry of the term of the lease no new lease was executed but the mortgagee gave notice to the mortgagor that he would have to pay rent at an enhanced rate or he must quit, and sued the mortgagor and the surety for rent at the rate stated in the notice.

Held, that under the contract between the parties the mortgagee had no power to issue any notice to enhance the rent which would really amount to enhancing the interest on the mortgage.

Held, also, that the surety was not responsible for any rent that had fallen due after the expiry of the lease. (Robertson, J.)

Sardar Ali *v.* Muhammad Bakhsh.—126 P. L. R. 1901.

—— *Lease in favour of father—Manager of Hindu family—Lessee bound to pay whole rent to father irrespective of the relations, good or bad between the father and sons.*

Held, that where a lease of immoveable property has been executed in favour of a Hindu father living jointly with his sons

LEASE—TERMINATION.

tenant is bound to pay the rent to the father and is not concerned with any dispute between the father and the sons *inter se* and even if sons have been joined as nominal defendants in the rent suit, the matter should be treated between the father and the tenant alone. Civil Revision No. 1571 of 1910 decided on 27th November 1911, *followed*. (Kensington, J.)

Narpat Rai *v.* Nausharia Mal.—17 P.W.R. 1913; 15 P. L. R. 1912 (Supp); 18 I.C. 592.

——*Termination before expiry—Remedy of lessor.*

Held, that where a lease is determined before its expiry the the lessor is not necessarily entitled to recover an exact proportion to the period for which the lease had run irrespective of all the other considerations.

Held, also, that when the plaintiff terminated the contract on little more than technical grounds, at a time when it was obviously to his great advantage to do so, he should be required to give the defendant that credit for his advance which he would have had to give him if the term of the lease had run its full course. (Leslie Jones and Wilberforce, JJ.)

Kirpa Ram *v.* Kashmir State.—3 Lah.L.J. 120.

LEGAL PRACTITIONERS ACT, (XVIII OF 1879).

——*Ss. 3 and 36—Tout—Definition of tout—Evidence required to declare a tout—Chief Court's power of, and grounds, for revision—Punjab Court Act (XVIII of 1884), S. 13.*

Held, that before a man can be declared a tout it is essential to prove that he received a remuneration from a legal practitioner and in consideration thereof procured the employment of the latter in any legal business, or that in consideration of any such remuneration, he proposed to a legal practitioner to procure his employment in any legal business.

Held, also, that proceedings under the Legal Practitioners Act XVIII of 1879, are neither Civil nor Criminal, but the Chief Court in exercise of the powers conferred upon it by Section 13 of the Punjab Courts Act XVIII of 1884 is competent to revise an order passed under Section 36 of the Legal Practitioners Act 1879, if it is shown that the provisions of that section have not been duly complied with or for other good and substantial reason. For example:—(1) if the petitioner's name is included in a list of touts without any opportunity being given to him of showing cause against such inclusion, or (2) if there is no evidence, whatever to support the Subordinate Court's finding, or (3) if the evidence, such as it is cannot legally be accepted for proving the petitioner is a tout within the meaning of Section 3 of the Act, 41 P. R. 1888 Cr; 3 P. R. 1900 Cr.; Cr. Rev. No. 3083 of 1897; Cr. Rev. No. 1910 of 1899; *unpublished*; I. L. R. XXI All., 181; *referred to*. 6 All., L.J. 22, *dissented from*. (Rattigan and Williams, JJ.)

Man Singh *v* The Crown.—115 P L R. 1909; 11 P. R. 1909 Cr.; 28 P.W.R. 1909 Cr.; 3 I. C. 977.

LEGAL PRACTITIONERS ACT, (XVIII OF 1879), Ss. 3 & 36.

——*Ss. 3 and 36—Tout - Evidence—Interference by the Chief Court.*

Held, that a person cannot be declared a habitual tout when evidence of his being so is vague and general, while there is the testimony of apparently respectable witnesses to the contrary. (Frizelle, J.)

Nizam Din *v.* Crown.—26 P. W. R. 1909 Cr.; 4 I. C. 1021.

——*Ss. 3 and 36—Tout—Evidence—Power of Chief Court to interfere.*

Held, that, the evidence of an ordinary witness to the effect that a Barrister pays a person commission on any case brought to him while the Barrister himself denies, is not sufficient to declare that person a habitual tout. (Harris, J.)

Baisakhi Ram *v.* The Crown.—27 P. W. R. 1909 Cr.; 4 I. C. 1022.

——S. 13—Back fee—Remuneration contingent on success of a case *See* Contract Act, S. 23.

61 P.R. 1907; 33 P.L.R. 1907; 45 P.W.R. 1907.

——*S. 13—Misconduct.*

It is misconduct on the part of a legal practitioner to stipulate with his client to share in the results of litigation. (Chatterji and Robertson, JJ.)

In the matter of a Pleader of Chief Court.—141 P.L.R. 1904; 69 P.R. 1904.

——*S. 13—Pleader taking sides against former client—Grossly improper conduct.*

A pleader, after his dismissal without misconduct on his part, or after the close of the business, is at liberty to take sides against his former employer, provided always that he has no secrets to carry with him that can be used to his former client's prejudice. But he is not competent to do so when he is neither discharged by his client nor has the business for which he was retained closed. Where a Mukhtar retained by the complainant defended the accused when the latter was retired after order of his discharge was set aside on revision. *Held*, that the conduct of the Mukhtar was grossly improper. 6 Cal. 79; 12 Bom. 95, *referred to*. (Clark, C.J. and Robertson, J.)

Ali Muhammad *v.* Babu Sham Lal.—45 P.L.R. 1904; 2 P.R. 1904 Cr.

——*S. 13 (b)—Legal practitioner—Improper conduct in discharge of professional duty—Misappropriation of client's money—Failure to offer explanation to Court even where required to do so—Effect.*

The conduct of a legal practitioner is grossly improper in the discharge of his professional duty within the meaning of section 13 (b) of Act XVII of 1879 and renders him liable even for dismissal if he (1) misappropriate his client's money entrused to him for certain specific purposes or (2) deliberately omits to answer the communication of the High Court demanding explanation as to his conduct in discharge of his professional duties. (Shah Din, C. J. and Leslie Jones, J.)

In re Mr. Asquith.—30 P.W.R. 1917 Cr; 18 Cr. L. J. 903; 42 I. C. 135.

LEGAL PRACTITIONERS ACT (XVIII OF 1879), S. 13.

—S. 13—*Professional misconduct—Relations with client—Position of trust-cheating a client out of subject-matter of suit—Punishment—Suspension from practice.*

When the client of a pleader died, leaving a minor son with a mother as guardian, the pleader taking improper advantage of his position, plotted to secure for himself the benifit of the litigation, and to obtain the subjeet-matter of the suit for himself :

Held, that the Court had ample justfication for ordering the permanent removal of the pleader from the list of pleaders entitled to practise on the ground of professional misconduct and that the subsequent order of suspension from practice for a period of three years went as far in the direction of mercy as it properly could go. (Lord Macnaghten, Lord Collins and Sir Arthur Wilson,).

In *re* Chanda Singh—10 P. W. R. 1915 ; (Cr.)
91 P. L. R. 1915.

(N. B)—The High Court judgments in the above case, are reported in 11 P. W. R. (Cr.) and 11 (a) P.W.R. 1915 Cr.

—S. 13—*Professional misconduct—Writing letter to Commissioner to report in client's favour—Addressing and circulating disrespectful letter to the Magistrate of the District.*

Where the pleader addressed a letter to a Commissioner appointed to investigate a case to report in his client's favour it is professional misconduct under S. 13, Cl. (*b*) of the Act.

Where a pleader addresses to the Commissioner of the District a most disrespectful letter and circulates it freely among his subordinates, he is guilty of misconduct which can be taken notice of under Cl. (*f*) of S. 13 of the Act, though the matter is one of a private nature between the pleader and that officer.

To prove handwriting evidence of persons acquainted with the handwriting is admissible though they are not experts under S. 47 of the Evidence Act. (Kensington C.J. Rattigan and Shadi Lal, JJ.)

In the Matter of Bhai Chanda Singh.—18 P. R. 1915;
28 I. C. 722;

—*Ss. 13 and 14—Competency of Distict Judge to enquire into a charge of misconduct—Toutism—Chief Court's power of Revision.*

Held, that :—

(1) Section 14 of Act XVIII of 1879 applies to all clauses of its Section 13 as amended by Act XI of 1896.

(2) When any of the charges mentioned in Section 13 of the said Act is brought to the notice of any Court within whose local limits the pleader is ordinarily practising the presiding officer has jurisdiction to proceed against him (Pleader) under its Section 14 and can report, in the manner prescribed thereunder, to the High Court for suspending or dismissing such pleader in case the charge is made out 15 Cal., 152 P. C.; 27 Cal., 1023; *distinguished.*

(3) In acting under Section 14 of the said Act, the Court is bound to hold preliminary inquiry in order to find out distinctly what is the charge, and after satisfying itself that it is *prima facie* a true one, but

LEGAL PRACTITIONERS ACT, (XVIII OF 1879), S. 13.

not before the Court can proceed to issue notice required in paras 1 and 2 of the same section. Such a notice if issued on a vague report is liable to be set aside on revision by the High Court.

(4) In order to sustain a charge under clause (*c*) of Section 13 of the Act the gratification paid to the tout must be "out of any fee paid or payable to a pleader" but does not include a payment made out of the *Munshiana* of a pleader's *Munshi*. (Johnstone and Williams, JJ.)

Amolak Ram *v.* The Crown.—3 P. W. R 1909 Cr; 1 I.C. 99.

——*Ss. 13 and 14—Unprofessional conduct—Whether Subordinate Courts can enquire into charge falling under Cl. (f) of S. 13.*

In this case it was contended for the petitioner that a Subordinate Court is not legally competent to make proceedings under section 14 of the Legal Practitioners Act in cases which come under clause (*f*) of section 13, "for any other reasonable cause," and is confined to cases failing under clausce (*a*) and (*b*). It was further contended that since the constitution of the High Court the petitioner has become a Vakil and that, under the Letters Patent the High Court alone has the power to initiate proceedings against a Vakil.

Held, that the natural construction of section 14 is that it includes clause (*f*) just as much as any other clause of section 13.

Held consequently, that the District Judge was legally competent to take action under section 14 of the Act. 39 M. 1045 (F. B.), *followed*. 31 P. W. R. 1909 Cr. In the matter of Southekul Krishna Rai, 15 C. 152; 14 I. A. 154 (P.C.); 7 B. L. R. 179, *distinguished*, 27 C 1023, *disapproved*. (Petman, J.)

In the matter of the Legal Practitioner's Act, 1879.—152 P. L R. 1919; 2 Lah. L. J. 51; 54 I.C. 982.

——*S. 13 (b)—Misconduct—Mukhtar advising his client to absent himself in order that the suit should be dismissed in default.*

A *mukhtar* advised a client, whose witnesses had not reached the Court on the day fixed for the hearing that client being a plaintiff, to absent himself in order that the suit should be dismissed in default and not on the merits for lack of evidence. *Held*, that the conduct of the *mukhtar* was grossly improper. (Reid, C. J. and Kensington, J.)

In the Matter of a Mukhtar.—56 P. R. 1902.

——*S. 13 (b)—Misconduct—Mukhtar's writing an objectionable letter to the Presiding Officer of a Court—Apology—Suspension.*

Held, that the conduct of a Mukhtar, who writes for another person a letter to the address of a presiding officer of a Court, on the supervision of Courts subordinate to his Court, and uses highly objectionable language in it, comes within the terms of section 13 (*b*) of the Legal Practitioners Act. For such misconduct the Chief Court suspended a Mukhtar from practice for a period of three months and declined to accept apology tendered by him before the presiding officer of the Court concerned and the Chief Court. (Reid and Robertson, JJ.)

In the Matter of Mukhtar.—9 P. R. 1902; 166 P. L. R 1901.

——*S. 13 (c) (d)—Legal Practitioner—Misconduct—Payment of part of Munshiana to another pleader's Munshi.*

In the absence of a counsel from the station where he was

LEGAL PRACTITIONERS ACT, (XVIII OF 1879), S 13.

practising his *Munshi* took a client to a pleader who out of the *Munshiana* paid by the client gave a portion to the Munshi.

Held, by the Full Bench, that in the absence of evidence of procuring or attempting to procure employment as pleader or of any remuneration having been given or promised to the *Munshi* by the pleader before the client was taken to him and of any evidence that the client was deceived or any misrepresentation was made to him, the pleader could not be held guilty of misconduct within the meaning of clauses (*c*) and (*d*) of Section 13 of the Legal Practitioners Act.

Held, by the Division Bench, that the pleader was guilty of misconduct under clause (*c*) of the section. The Judges observed, In,, referring the case to the Full Bench it was rather assumed that the words "out of any fee..... ..services" qualified "tenders" and "gives" as well as "consents to the retention of" but examination of the structure of the clause shows that this assumption was hardly correct.' (Johnstone and Williams, J.J.)

In the case of a Pleader.—27 P. R. 1910 Cr.; 69 P. L. R. 1910; 22 P. W. R. 1910 Cr.; 6 I. C. 736.

——*S. 13 (f) and (b)—As amended by Act XI of 1896—"Any other reasonable cause"—Whether confined to professional conduct.*

S. 13 (f) of the Legal Practitioner's Act as amended by Act XI of 1896 is not confined to misconduct of a legal practitioner in his professional capacity. 29 C. 890; 34 M. 29; 9 P. R 1902, *referred to.* (Kensington, C. J. Rattigan and Shadi Lal, JJ.)

A First Grade Pleader *In the matter of*.—18 P.R. 1915; 12 P.W.R. 1915 Cr.; 28 I.C. 722.

——*S. 13. (f)—Grossly improper conduct—Writing letter to judicial officer asking him to decide case before him in particular manner.*

A legal partitioner who writes a letter to a judicial officer asking him to decide a case pending before him in a particular manner is guilty of grossly improper conduct within the meaning of S. 13 (f) of the Legal Practitioner's Act. (Leslie Jones and Broadway, JJ.)

In the matter of Narendra Singh—161 P. L. R. 1917; 3 P. W. R. 1918 Cr.; 44 I. C. 123;

——*S. 13. Cl. (f)—Pleader—Retention of suspected tout in service—Notice by Bar Council—False assurance of dismissal of tout—Misconduct.*

Held, that a charge of the following description against a pleader, if proved, constitutes a professional misconduct under section 13 clause (*f*) of Act XVIII of 1879, for which he is liable to be either dismissed or suspended for a certain period (which was six months in the present case).

1. That Mr. *M.* after having given a very clear promise to the Bar Council to dismiss *N.* whose name had been entered in the list of suspected touts and to whom notice had been issued to show cause why he should not be proclaimed as a tout retained N. in his service and, that he made a distinctly false promise in

LEGAL PRACTITIONERS ACT, (XVIII OF 1879), S. 14 to 36.

order to escape the further action of the Council.

2. That Mr. *M.* in the first instance made a definite promise to escape further action of the Bar Council and he broke that promise and subsequently when an enquiry was made from him that he deliberately made a false statement false to his knowledge regarding the employment and notice, &c., of dismissal of *N.* (Robertson, Kensington, Rattigan and Shah Din, JJ.)

A First Grade Pleader, *In re.*—214 P. L. R. 1915; 49 P. W. R. 1914 Cr.; 27 I. C. 156.

——*S. 14—Jurisdiction to enquire into misconduct.*

Held, that the first clause of Section 14 of the Legal Practitioners Act empowers any Court in which a pleader practises to consider a charge of misconduct made agianst him in such Court. The section does not limit the consideration of a charge to the Court in which the misconduct is alleged to have been committed. (Reid and and Robertson, JJ.)

In the matter of Babu Het Ram, Pleader. 188 P. L. R. 1901.

——*Ss. 27 to 30—Pleader—Amount allowed on taxation—Suit for recovery of fee.*

Held, that sections 28 to 30 of Act XVIII of 1879, do not contemplate to debar a pleader from recovering from his client a fee actually allowed by the Court on taxation, what they do provide is, that without complying with their provisions he cannot enforce the payment of the remuneration agreed to be paid to him by his client in excess of, and apart from, the amount thus allowed. 136 P. R. 1893; 1. L. R, XII A. 169; 1. L. R. IX M. 37); *followed*; I. L. R. XXV, C 805. *distinguished*. (Lal Chand, J)

Sarju Pershad *v.* Girdhari Lal.—1 P. R. 1909; 21 P. L. R. 1909; 8 P. W. R. 1909; 1 I.C. 393.

——*S. 36—Tout—Court competent to declare—Punjab Courts Act (XVIII of 1884) S. 23.*

A District Judge in the Punjab is not competent to declare a person a law-tout under section 36 of the Legal Practitioners Act, for under the Punjab Courts Act, section 23, the Local Government has notified the Divisional Judge, to be the District Court for purposes of the Legal Practitioners Act. (Chatterji, J).

Bawa Lachhman Das. *v.* The District Judge, Gurdaspur.—108 P. L. R. 1904; 22 P. R. 1904 Cr.

——*S. 36—Tout—Declaration of person as—Revision, Powers of Chief Court—Evidence—Personal knowledge of judge.*

Held, that an enquiry under Section 36 of Act XVIII of 1879 (as amended) is not a formal proceeding governed either by the Codes of Civil or Criminal Procedure. So the statements of witnesses recorded by the District Judge and read to them before the Divisional Judge (acting as District Judge for the purposes of the Act) in the presence an accused who is allowed to cross-examine them are admissible in evidence against him even if they are not

LEGAL PRACTIONERS ACT (XVII OF 1879) S 36.

made on oath or solemn affirmation. (See Section 13 and 14 of Indian Oaths Act 1873).

Held, also, that if a number of respectable persons or pleaders of apparent impartiality in a particular District are found to be of of opinion that a person is a "tout" that fact is sufficient to justify the Court in declaring that the person is by general repute a tout and the Law appears to have been framed, as it is, with the distinct object of evading the difficulty of compelling witnesses to give the specified grounds upon which their opinions are based.

What amounts to "general repute" is a matter for the Judge making the enquiry to decide.

But before the accused can be declared a tout he is entitled to get, and the Court is bound to grant him ample opportunity to adduce relenting evidence after hearing all that is said against him.

Held, also, that the mere fact that the District Judge has accepted as sufficient evidence which might appear to the Chief Court inadequate to support his finding is not a good ground for interference with his order. On the other hand, as the order declaring a person to be a tout is one which very seriously affects the character and prospects of the person against whom it is passed, the Chief Court is fully justified to scrutinize such orders with the object of satisfying itself that there has been a compliance with the provisions of Law and that the person affected has been given full opportunity of meeting the charge brought against him (11 P. R. 1909 Cr; 28 P. W. R., 1909) Cr. *referred to*.

Held, also that a Judge must decide every case on the evidence before him and not upon any knowledge which he may himself possess *aliunde* unless he informs the parties of the nature and source of such knowledge and allows himself to be cross-examined thereupon. 37 P. R. 1903) Cr., *followed*.

Held, further that the Chief Court is competent to review its own orders in such like cases.

Under certain circumstances certificates of good character or certified copies thereof can be admitted in evidence, if not objected to by the opposite side; without calling the gentlemen as witnesses who have granted these certificates (Ra tigan, J.)

Bute Khan *v.* The Crown—120 P. L. R. 1909 ;
29 P. W. R. 1909 Cr.; 3 I. C. 982.

——*S. 36—Tout—Declaration without legal proof.*

S. 36 of the Legal Practitioner's Act, requires proof by evidence of general repute or otherwise before a man can be declared a tout. Such evidence should be taken in the ordinary manner and brought on the record and where this is not done, the order of declaration cannot be maintained. (Johnstone, J.)

Shankar Singh *v* Emperor.—112 P. L. R 1912 ;
12 P. W. R. 1912 Cr.; 15 I. C. 307.

——*S 36—Tout—District Magistrate framing a list of—Power of Chief Court to revise - Punjab Court Act, S. 3*

Proceeding under Section 36 of the Legal Practitioners Act

LEGAL PRACTITIONERS ACT, (XVII OF 1879), S. 41.

are neither civil proceedings governed by the provisions of the Code of civil procedure, nor criminal proceedings governed by the Criminal Procedure Code, and, therefore, neither the Civil nor the Criminal jurisdiction of the High or Chief Court can be invoked for the purpose of revising orders passed under that section. (Kensington, C. J. and Rattigan, J.)

Sadar-ud-Din *v.* Emperor.—266 P. L. R. 1914; 18 P. R. 1914 Cr.; 51 P. W. R. 1914 Cr; 25 I. C. 513.

— *S. 41.—Improper conduct—Advocate—Previllege as a suitor.*

Although any action clearly taken as a private individual in the prosecution of a case, or the setting up of a defence would not, under ordinary circumstances, justify the High Court in taking notice of such action as a breach of professional good conduct merely because the individual concerned happened to be an Advocate, yet conduct which is in itself indefensible and amounts to gross misconduct in an Advocate is not taken out of the purview of Section 41 of the Legal Practitioners Act by a mere colourable pretence that it was the conduct of a suitor, defendant, or accused in that capacity. Privy Council Appeal Vol. Page 283, *referred to.* (Clark, C. J. Chatterji and Robertson, JJ.)

In the matter of Mr.———————Bar-at-Law.—5 P. R. 1902; 148 P. L. R. 1901.

LEGAL REPRESENTATION.

——*Intermeddling with part of estate—Extent of liability—Wrongful Conversion of property—Non-production—Presumption—C. P. Code, S. 2 (11).*

Section 2 (11) of the Code of Civil Procedure, 1908, includes in the definition of legal representative any person who intermeddles with the estate of the deceased, and hence intermeddling only even with a part of the estate makes the intermeddler liable to the extent at any rate, of the property taken possession of by him.

Where a person who has wrongfully converted property will not produce it, it shall be presumed as against him to be of the best description. (Reid, C.J. and Beadon, J.)

Mst. Daropati *v. Mst.* Sada Kaur.—115 P. R 1913; 39 P. L. R. 1914; 22 I. C. 242.

— *Proper person—Accounts—Commissioner not knowing the character in which accounts are kept—Objections to report not taken in first Court, or not raised in grounds of appeal before the Appellate Court.*

Held, that in the presence of the widow and mother of the deceased, the widow of deceased's cousin should not be added as a Legal Representative and her name, if added; should be struck off.

Held, further, that a Local Commissioner, appointed by consent of parties, cannot be superseded simply on the ground that he is incompetent to go into the accounts as he cannot himself read the characters in which such accounts are kept.

LEGAL REPRESENTATION.

Held, further that objections against the report of the Local Commissioner not raised in the original Court, or those against the said report and decree of that Court not put forward in the grounds of appeal before the lower Appellate Court and therefore not dealt with by the latter Court cannot be allowed to be raised for the first time in the further appeal before Chief Court. (Kensington, C. J. and Shah Din, J.)

Munshi Ram *v.* Misri.—70 P. L. R. 1915 ; 9 P. W. R. 1915 ; 27 I. C. 598.

LEGITIMACY.

—*Pasthumous son—Burden of proof of legitimacy—Succession to large estate.*

In a case of disputed succession of property of a large value as well as to a jagir, more than ordinary care should be taken to place the legitimacy of a posthumous son beyond all possible disputes and the onus of proving ligitimacy is on the posthumous son (Chevis and Shadi Lal, JJ.)

Jagir Singh *v.* Dalip Kaur.—42 P. W. R. 1918; 44 I. C. 57.

——*Sikh Jat abducting Sweeperess—Subsequent conversion of both to Muhammadanism—Marriage under Muhammadan Law—First husband taking no steps to assert marital rights—Legitimacy of issue of second marriage.*

A. a *Sikh Jat* abducted a sweeper *B.* whos husband was living. *B's* husband prosecuted *A*, for abduction. Some time after that *A* and B turned Muhammadans and went through the usual form of marriage prescribed by Muhammadan Law. They lived as man and wife for a long series of years and subsequent to his complaint for abduction *B's* first husband never took any steps to assert his marital rights. As the result of the marriage of *A.* and *B.* a son *C.* was born to them *C.* lived with *A.* and was treated by him as well as his brotherhood as his ligitimate son. *Held*, that there was a strong presumption that B's first husband had repudiated or divorced her before *A.* married her, and consequently *C.* was the legitimate son of *A.* (Rabertson and Shah Din, JJ.)

58 P. R. 1912 ; 240 P. W. R. 1912 ; 13 I. C. 662.

LETTERS OF ADMINISTRATION—GRANT OF.

—*Grant of—Discretion of Judge.*

It is discretionary with the judge to grant letters of administration of an intestate to property. (Chevis, J.)

Budhu *v.* Ram Sarup.—96 P.L.R. 1917 ; 42 I. C. 737.

LETTERS PATENT.

——*Cl. 10.—Appeal—Limitation.*

Held, that the period for an appeal under the letters Patent is governed exclusively by the Rules made by the High Court, which provide *inter alia* that no copy of the decree, order or judg-

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ment appealed from need accompany the memorandum of appeal. The evidence of delay was treated as a paramount consideration and all probable causes of delay were swept from the path of the appellant. There is, therefore, no reason for extending time even though the Court was in vacation when the thirty days expired. (LeRossignol and Martineau, JJ.)

Fateh Mohamad *v.* Chothu Ram.—3 Lah. L. J. 361; 60 I. C. 737.

——*Cl. 10.—Appeal under—New point not to be raised.*

Held, that as the plaintiffs have all along sued for possession as mortgagees they cannot be allowed for the first time at the hearing of the Letters Patent Appeal to turn round and ask the court to hold that the plaintiff's suit was for ejectment of their tenants and to pass an order under section 100 of the Punjab Tenancy Act. (Chevis and Scott Smith, JJ.)

Basant Ram *v.* Mahomed Ali.—4 Lah. L.J. 293.

——*Cls. 10, 29 and 30.—"Judgment"—Meaning of—Interlocutary order—Stay of execution.*

Held, that the term 'judgment' as used in the Letters Patent is a very wide one, having a not much narrower connotation than the defination given in the Code of Civil Procedure, and this view receives confirmation from the language employed in Section 29 and 30 of the Letters Patent which give a right of appeal to His Majesty's Privy Council, subject to certain conditions, from even a preliminary or interlocutory judgment, decree or order.

Held, accordingly that 'judgment' in Section 10 of the Letters Patent includes any interlocutory judgment which decides so far as the Court pronouncing such judgment is concerned, whether finally or temporarily, any question materially in issue between the parties and directly affecting the subject matter of the suit.

Held, consequently, that an order on an application to stay execution pending appeal comes within this defination of 'judgment' and so is appealable. 24 M. 358; 21 C. 473; 8 B. L. R 433; 43 C. 867; 7 M. H. C. 384, *referred to*. (Le Rossignol and Petman, JJ.)

Gokal Chand *v.* Sanwal Das.—1 Lah 348; 2 Lah. L. J. 32. 55 I. C. 933.

——*Cl. 10.—Judgment.—Order of single Judge of the High Court dismissing an appeal from an order of demand—Appealability.*

In order to decide whether an adjudication should be treated as a "judgment" regard should be had, not to the form of the adjudication but to its effect upon the suit or other civil proceeding in which it wa made. If its effect whatever its form may be and whatever may be the nature of the application on which it was made, is to put an end to the suit or proceeding so far as the court before which the suit or proceeding is pending is concerned, or if its effect, if not complied with, is to put and end to the suit or proceeding, the adjudication is a judgment within cl. 10 of the Letters Patent.

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8 B. L. R. 433; 45 C. 111; 44 C. 804; 39 A. 191; 35 M. 1 (F. B.) 3 M. H. C. R. 384, *relied upon.*

The determination of the question whether the plaintiff is entitled to bring his suit after the lapse of 12 years from the date of the mutation consequent upon an alienation is a determination of a right and the adjudication there on certainly affects the merits of the question between the parties, more especially when it involves the determination of the point whether the defendant has acquired a prescriptive right of ownership to the land in dispute. Where a suit for setting aside an alienation of ancestral land is dismissed as barred by limitation and on appeal a single judge holds that it is not so barred, his judgment confirming an order of remand by the lower appellate court is appealable under cl. 10 of the Letters Patent. (Shadi Lal, C. J. and Harrison, J.)

Ruldu Singh *v.* Sanwal Singh.—3 Lah. 188; 67 I. C. 388.

——*Cl. 10—Judgment—What is.*

The term judgment in S. 10 Letters Patent includes any interlocutory judgment which decides so far as the Court pronouncing such judgment is concerned, whether finally or temporarily, any question materially in issue between the parties and directly affecting the subject matter of the suit. 1 Lah. 348; 35 Mad. 1, *followed.* (Shadi Lal, C. J. and Abdul Quadir, J.)

The Firm Badri Das Janki Das *v.* Mathan Mal.—1922 Lah. 185.

——*Cl. 10.—Limitation Act, S. 4.—Applicability of.*

Held, that the Letters Patent together with the rules framed thereunder as to limitations for filing appeals are complete Code in themselves and therefore the general provisions of the Limitation Act, including section 4, do not apply to appeals filed under section 10 of the Letters Patent. (Scott Smith and Chevis, JJ.)

Dial Singh *v.* Budha Singh.—2 Lah. 127; 3 Lah. L. J. 415; 61 I. C. 327.

——*Cl. 10.—Point not raised before single Judge—When allowed before Division Bench.*

Held, that the appellants are not entitled to ask the Division Bench hearing an appeal under the Letters Patent to set aside the judgment of the Single Bench, when it is found that that judgment is correct on all the points upon which the Single Judge was called upon to adjudicate. (Shadi Lal and Broadway, JJ.)

Ahmad Shah *v.* Faujdar Khan.—2 Lah. L. J. 1; 55 I. C. 983.

——*Lebil—Previliged communication—Malice—Communication from clergyman to lady attached to his mission.*

Where a minister in charge of a charitable institution having promised to perform the marriage between a lady attached to the mission and the plaintiff, subsequently wrote to the lady, on further information supplied to him, regretting that he could not conscientiously have anything whatever to do with her marriage with the plaintiff, informing her at the same time that he had not sought for information and made inquiries, but that facts had been brought to his notice which he had taken trouble to look into, and that he was forced

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to the painful conclusion that the plaintiff was altogether unworthy of her, *held* that such communication by the clergyman was a priviledged communication, and that a suit to recover damages for defamation by the plaintiff could not be sustained, no malice having been proved. Where the existance of a privileged occasion is established, the plaintiff must give affirmative proof of malice, that is, dishonest or reckless ill-will, in order to succeed. It is not for the defendant to prove that his belief was founded on reasonable grounds, and there if no difference in this respect between different kinds of privileged communication. To constitute malice there must be something more than the absence of reasonable ground for belief in the matter communicated. (Clark, C. J. and Reid, J.)

R. *v.* C.—26 P. L. R. 1909 ; 83 P. R. 1908; 152 P. W. R. 1908 ; 4 I. C. 918.

Lis Pendens Contentious proceeding—Transfer of property before final decision of case—Transfer of reversionary rights is illegal.

Dealings with property in suit effected after notice of suit brought in the Court of first instance and before the decision in appeal by the final Court of appeal are dealings effected *pendente lite* and subject to the doctrine of *lis pendens* at whatever time between these two periods they may occur.

A suit as soon as it becomes contentious in the original Court continues so ordinarily until final decision of the appellate Court and should ordinarily be held to be actively prosecuted even during the poriod between the decree and the filing of the appeal.

It might be shown that there was an acceptance of the decree of the first Court or great laches in prosecuting the litigation but it would lie upon the party making such allegations to establish them.

The law of *lis pendens* in England is different from that prevailing in this country. The Law of *lispendens* in the country is founded on the fact that it would be impossible to bring any suit to a successful termination if alienation *pendente lite* were permitted to prevail. 30 P. R. of 1891 and 56 P. R. of 1899, *overruled*.

Held, by the Division Bench (*Robertson* and *Reid, JJ.*) that a sale by a plaintiff in whose favour decrees has been passed of the property in suit before notice of appeal by the defendant is served on him is not exempted from the operation of the doctrine of *lispendens* by reason of the fact that the defendant on his appeal, to which the vendee was not impleaded as a respondent, chose to accept from the plaintiff a compromise of the suit which was not unreasonable.

The sale of reversionary rights is opposed to the principles of the tribal law and the vendee gets no title by the sale, even if the reversioner had before the sale obtained a decree that an alienation of the property by the proprietor in possession of it would not affect his reversionary rights. (Clark, C. J. Reid and Robertson, JJ.)

Hakim Singh *v.* Charan Das.—19 P. L. R. 1904; 80 P. R. 1903 (F. B)

LIMITATION.

——*Application for bringing legal representation of a deceased defendant—Sufficient cause.*

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Held, that ignorance of the fact of the death of a defendant, is often sufficient cause to prevent a suit from abating, and an application for substitutions of heirs after the prescribed time may be entertained where there are "extenuating circumstances in respect of the delay and sufficient cause for it" accordingly.

Where plaintiffs and defendants lived in different villages and defendants where at least 18 in number and plaintiffs ignorant Zemindars probably never became aware of the defendant's death till shortly before application for substitution of heirs, the suit was held not abated, although defendant had been dead about 3 years. (Johnstone and Lal Chand, JJ.)

Dadu and others *v.* Kadu and others.—113 P. R. 1907; 194 P. W. R. 1907.

——*Abandonment—Adverse possession—Neighbour tethering cattle—Non-proprietor residing outside the village—Its effect on his residential house in the village which has fallen down—Possession goes with title—Art. 142 of Act IX of 1908.*

Held, that—(1) A non-proprietor by merely living outside the actual village *abadi* cannot be said to have abandoned the site inside the *abadi* on which he once had his residential house which had fallen down and had not been rebuilt for many years. (2) The rule laid down in Article 237 of Mr. Rattigan's Digest of the Punjab Customary Law, even if applicable in such a case, is of no avail where the proprietary body have made no attempt to enforce the penalty mentioned therein.

The fact that one of the proprietors whose house is nearly began to use vacant site by tethering his cattle there does not make any difference. (3) Possession in the case of vacant site is presumed to go with the title and its mere used by a neighbour for the purpose of tethering his cattle thereon cannot be regarded as adverse possession and consequeatly Article 142 of Act IX of 1908 does not apply. (Chevis, J.)

Lachman Das *v.* Narsingh Das—101 P. L. R. 1916; 108 P. W. R. 1916; 36 I. C. 207.

——*Adverse possession by one co-sharer—Overt Act.*

61 P.W.R. 1914; 45 P.R. 1914; 105 P.L.R. 1914; 22 I. C. 805.

——*Adverse possession—Mortgagor and Mortgagee. See Mortgagor and Mortgagee.*

19 P. W. R. 1918; 43 I.C. 456.

——*Adverse possession—Vacant site—Adverse possession of—What amounts to—Suit for recovery of vacant site—Onus of proof.*

In a case of waste land, possession follows title, and a person suing for possession of such land need only prove a *prima facia* title not extinguished by limitation. Tying cattle or sheep or

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storing dung cakes on such land is not sufficient to give title to such land by adverse possession. (Scott Smith, J.)

Fatteh Khan *v.* Bisakhi Ram.—117 P. L. R. 1917; 161 P. W. R. 1917; 42 I. C. 412.

——*Adverse possession—Use of vacant site—Effect.*

88 P. L. R. 1919.

——*Age at the time of institution of suits——Burden of proving. See Limitation Act, S. 6.*

78 P.W.R. 1914; 167 P. L. R. 1914; 23 I. C. 462.

——*Applicability.*

The limitation for a Letters Patent appeal is governed by the rules made by the High Court. The Limitation Act does not apply to such a case where the limitation for a Letters Patent appeal expired, when the High Court was in vacation. The appeal could not be presented after the vacation as being time-barred. (Le Rossignol and Martineau, JJ.)

Fatteh Mahamad *v.* Chothu Ram.—3 Lah. L. J. 361; 60 I. C. 737.

——*Declaratory decree—Effect of—Right of suit not barred by omitting to get adverse revenue entry connected—Cause of action—Attempt to oust.*

Where in certain mutation proceedings the names of the *pattidars* was entered as owners, and the names of the plaintiffs as in possessions, and no plaintiff's appeal the order was upheld, party aggrieved being referred to a civil suit, but the possession of the plaintiffs was not disturbed, and they did not bring a declaratory suit, till some years later when the *pattidars* applied for partition, and thus attempted to oust plaintiffs from possession.

Held, (i) that the plaintiffs had fresh cause of action from the order in partition proceedings, and (ii) that being in possession, their title could not have been extinguished by their neglect to sue for declaration, when the cause of action arose first on the adverse entry in revenue papers. (*a*) "In the ordinary course being in possession it would be upon any one asserting a superior title to prove it before ousting them, and an entry in the records would be no title in itself, but merely a piece of evidence of title, and the failure of the party in possession to bring a declaratory suit could not have operated to extinguish his title." (*b*) "Moreover, the declaratory decree is a form of relief which it is discretionary to seek, as well as discretionary to grant" (Robertson and Shahdin, JJ.)

Hakim Singh *v.* Waryaman—140 P. R. 1907; 187 P. W. R. 1907.

——*Limitation—Execution of decree—Effect of defective application.*

Where an application for execution did not state, (*a*) the names of all the judgment-debtors; and (*b*) whether an appeal had been

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preferred from the decree; and (*c*) what amount of costs had been awarded and *(d)* made no mention of the property of the judgment-debtor sought to be attached.

Held, (*a*) that it was not necessary to decide whether the application was, by reasons of the above defects, not in accordance with law. *(b)* that a notice issued under S. 248 Civ. Pro. Code, is a "step-in-aid" of execution, within the meaning of Art. 179 (4) in spite of its being issued on an informal and defective application for execution and hence effective for the purpose of keeping the decree alive. (Rattigan, J.)

Shankar Lal *v.* Zorawar Singh —116 P. R. 1907; 143 P. W. R. 1907;

——*Exparte decree—Application for review after expiry of time.*

Where the period for setting aside an exparte decree has expired, an application to review the judgment should not be accepted. (Johnstone, J.)

Santu *v.* Arjan Das.—131 P. W. R. 1912; 13 I. C. 318.

—— *Extension of period by new act—Effect of—Sale of equity of redemption of land by a sonless male proprietor—Declaratary suit by reversioner to protect his right.*

Held, that where an alienor died before Act I of 1900 came into force and the right of his reversioner to sue still survived the suit was governed by Act I of 1900. That the Act applies to sales of equity of redemption by the alienor. That even after the death of the alienor his reversioner is entitled to maintain a mere declaratory suit to declare that the sale of equity of redemption is not binding upon him. (Scott Smith, J.).

Mahai Mal *v.* Ghulam Kadir.—61 P. L. R. 1915; 11 P. W. R. 1915; 27 I. C. 607.

——*Gift of ancestral land by a sonless male proprietor—Suit by.*

Held, (i) that in the case of an alienation by a male proprietor subject to the customary law of the Punjab, if there is no reversioner in existence capable of objecting to the alienation, a son born after the alination has no *locus standi* at all; (ii) that, if there be any reversioner in existence capable of objecting to the alienation, then time begins to run at once in favour of the donee, and does not cease to run on the subsequent birth of a son, nor can he (in view of S 9, Limitation Act), take advantage of S. 7 of the same Act, on the ground of his minority; (iii) the time both for declaration and possession, under Punjab Act I of 00 is 12 years from mutation, and the Act is applicable to all cases, falling within its purview, instituted after its coming into force. (Johnstone and Rattigan, JJ.)

Inayat Khan *v.* Shabu.—108 P.R. 1907; 196 P. W. R. 1907.

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——*Insufficiently stamped plaint presented within Limitation.*

Held, (i) "That the word presented in the explanation to S. 4 of the Indian Limitation Act should be interpreted in accordance with the provisions of the Code of Civil Procedure, S. 48. (ii) "That the Court-fees Act and the Civil Procedure Code should be read together in regard to the presentation of plaints and the making up of stamp duty, but not with the provisions of the Limitation Act, which is not an act in *pari materia*. (iii) "That under S. 54 of the Civil Procedure Code, and S. 28 of the Court Fees Act deficiency in stamp can be made good by order of Court irrespective of the question whether on the date of finding them the limitation for the suit has expired or not. (iv) That under S 28 of the Court Fees Act on the making up of the deficiency of stamps duty by order of Court the plaint and all proceeding relative thereto are validated from the date of original presentation, even though the limitation for the suit had since expired. (v) That once the stamps are taken by the Court the order cannot be subsequently set aside, nor the validation of the original presentation annulled. Consequently that a plaint insufficiently stamped (but not wilfully or in bad faith) when filed and permission to make good the proper amount of Court-fee granted is validated from the date of presentation on the subsequent making up of the Court-fee within the time allowed by Court. (Chatterji and Johnstone, JJ.)

Said Ali Khan *v.* Fazal Mehdi Khan.—123 P. R. 1907; 82 P. W. R. 1907.

——*Interpretation of—Minor suit against.*

Bar of limitation must be interpreted strictly, especially when a minor's property is concerned. (Robertson, J.)

Fateh Mohammad *v.* Foja.—29 P.L.R. 1907.

——*Parties—Suit by managing member.*

In a suit instituted on behalf of a joint Hindu family *firm*, by its managing members, a plea was taken as to the non-joinder of the other members of the family, whereupon the plaintiffs at once admitted their mistake and the omitted members applied to be joined as plaintiffs. *Held* that "no question of limitation arises in regard to names added under S. 27 C Pro. Code, and the period of limitation counts from the date when the suit was originally instituted." (Robertson and Lal Chand, jj.)

Behari Lal *v.* Ram Chand.—149 P. R. 1907; 204 P. W. R. 1907.

——Plea raised for first time in appeal—Maintainability—Appeal on ground that whole claim was time barred—Failure to pay stamp duty on partition—Effect. *See* Practice.

14 P.W.R. 1918.

——*Pre-emption—Mortgage by way of conditional sale.*

Held, by the Full Bench, that in a suit for pre-emption in respect of a mortgage by conditional sale which has become absolute, limitation begins to run, where Regulation No. XVII of 1806,

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—applies from the expiry of the year grace allowed to the mortgagor under the Regulation—82 P. R. 1880 *overruled* : I. L. R., 14 All., 405 ; I. L. R., 20 All, 315 (F. B.) *followed*, V. W. R. (P. C.) 47 ; N. W. P. H. C. R. Vol. 4 and 5 p. 358 ; I. L. R. 3 All., 610 ; 121 P. R. 1894 ; 87 P. R. and 103 P. R. 1893 ; 30 P. R. 1892, *referred to*. (Clark, C. J. Reid and Maude, JJ.)

Atar Singh *v.* Ralia Ram.—103 P. R. 1901 ; 120 P. L. R. 1904.

—*Pre-emptoin—starting point of prescribed period—Land in the possession of the vendee at the date of sale—Mutation of names.*

The vendor in 1906 sold 3 field by 3 sale-deeds, each transferring one-third share out of each of the three fields to vendees who were father and son. Two of the field were at the date of sale in the possesson of the father vendee under a mortgage and the third he cultivated as a *tenant* before 1906 and in 1907-1908 and in subsequent years. In 1906 the mutation was refused on the ground that the vendor had not transferred possession to the vendee. Subsequently mutation having been sanctioned in 1912 the plaintiffs brought the present suit for pre-emption. *Held*, that since the veddee did not take possession of any portion of the land *under the sale* the period of limitation for the suit commenced from the date of mutation. The taking of possession under the sale is an overtact fixed as the terminus *a quo* for limitation because it constitutes a publication of the transfer. (Le Rossignal, J.)

Imam-ud-Din *v.* Khuda Bakhsh, 88 P. L. R. 1915 ; 63 P. W. R. 1915 ; 29 I. C. 146.

—*Pre-emption—Suit. See Punjab Pre-emption Act.*

97 P. R. 1917 : 40 I. C. 618.

—*Reference under Land Acquisition Act—Application for power to extend. See Land Acquisition Act S. 18*

93 P.W.R. 1917; 113 P.L.R. 1917; 244 P.L.R 1914; 25 I.C. 448.

—*Starting point—Alienation—Reversioner—Punjab Alienation of Land Act—Knowledge. See Punjab Alienation of Land Act.*

66 P.W.R. 1914; 159 P. L. R. 1914 ; 25 I. C. 724.

—*Starting point—Application by a creditor to have a sale declared null and void as against the official receiver—Lim. Act, Art. 181—Applicability. See Prov. Insol. Act S. 3.*

—*Starting point—Land shown in Rev. Register as joint—Application to authorities for partition—Cause of action, when arises—Withdrawal of suit with liberty—If all plaintiffs should join in applying.*

The land in suit had been shown in the Revenue Records for many years past as joint. Defendants, a recorded co-sharer, applied to the Revenue authorities for partition. The plaintiff, who claimed the land in suit as his whole property was referred to a civil suit for declaration of title :

Held, that the cause of action arose only when the defendant applied for partition, and the suit was not time-barred by reason of the land having been recorded for many years past as joint. Where

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several plaintiffs had sued jointly, but, with a view to avoid difficulties as to mis-joinder, had withdrawn the suit, with permission to bring a fresh suit, and subsequently filed separate claims:

Held, that the former suit did not bar the subsequent claims. (Shah Din and Chevis, JJ.)

Natha Singh *v.* Ishar Singh.—163 P. L. R. 1914; 99 P. W. R 1914; 23 I. C. 458.

——Starting point—Suit for declaration of sole ownership—Entry of joint ownership in Revenue records—Partition proceedings.

99 P.W R. 1914; 163 P.L.R. 1914; 23 I.C. 458.

——Starting point for filing a suit under S. 77 of the Registration Act—Making the order. *See* Registration Act, S. 77.

4 P. R. 1917; 37 I.C. 788.

——*"Sufficient Cause" for not presenting an appeal within the period prescribed—Whether time spent in applying for review may be excluded in computing the period—Mistake of law—Whether it may amount to sufficient Cause—Indian Limitation Act (Act IX of 1908) Ss 5, 14—Judicial discretion—Duty of superior court when it is questioned—Abatement of suits—Should not be pronounced ex-parte—Procedure in questioning abatement—Whether review or appeal is the proper remedy—Code of Civil Procedure (Act XIV of 1882) Ss. 365, 366, 368; 371—Substitution of parties in miscellaneous appeal—Sufficient for all stages of a suit.*

All that S. 5 of the Limitation Act requires in express terms as a condition of the exercise of the discretionary power for admitting an appeal presented after time is sufficient cause for not presenting it within time. The true guide for a Court is whether the appellant has acted with reasonable deligence in prosecuting his appeal, and if he has been delayed by prosecuting other civil proceedings were reasonably prosecuted and in good faith.

A mere mistake of law is not *per se* sufficient reason for asking the Court to exercise its discretion under section 5, but when it has in fact occasioned erroneous proceedings, it may be the foundation of an application for the indulgence which may be granted under section 5.

These rules having been laid down by Full Benches in all the Courts of India and acted on for years, the Privy Council will not interfere with them, whatever the law in England and whatever they might have been disposed to do if the matter were open. 10 All. 587, *overruled*. 19 All 348; (F. B.) P. R. 188 (F. B.) 7 W. R. 529 (F. B.), *approved*.

If a Judge purporting to exercise discretion does so under the view that there is no general rule, when in fact there is one, he misdirects himself and Superior Court must either remit the case or exercise the discretion themselves.

An order abating a suit is tentamount to a judgment in favour of defendant and should not be pronounced ex-parte without notice to the opposite side.

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S. 371 of the Code of Civil Procedure, 1882, which gives a remedy by review against an abatement order, is available to a plaintiff whether such order is passed under S. 336 or S. 368. The appeal allowed by S. 558 is intended for other matters than abatement.

When a suit in District Court was delayed pending disposal by the Chief Court of an appeal against an interlocutary order passed in such suits and substitution of parties was effected only in the Chief Court in such appeal and not in the District Court.

Held, that the introduction of a plaintiff or defendant for one stage of a suit is an introduction for all stages, and that it was unnecessary to apply to substitute parties in the District Court. (Lord Dunedin, Shah, Summer & Sir John Edge & Mr. Amir Ali, JJ.)

Brij Indar Singh *v.* Lala Kanshi Ram —126 P.W.R. 1917; 104 P R. 1917; 127 P.L.R. 1917; 42 I.C. 43 (P.C.)

——*Limitation—Suit for compensation for non delivery of goods effect of special clause that claim would not be recognised if not made within certain period from date of draft.*

The plaintiffs, indentors, sued the defendants for compensation for non-delivery of goods. A condition of the indent was that "no claim or dispute of any sort whatever can be recognized if not made in writing within 60 days from due date of draft." No draft was drawn, for the goods indented were never delivered.

Held, that the condition was in applicable to the case, for no bill of landing had been sent and no draft had been drawn. It could not be held that the words "due date of draft" mean "the date on which draft drawn for goods shipped had shipment been effected, would have fallen due." (Ried, J.)

Tannu Lal *v.* Behari Lal —145 P. R. 1908; 127 P. L. R. 1908; 54 P. W. R. 1908.

——*Taking over of a liability due from third person—Commencement of period of limitation—Limitation Act, Art 61, 120.*

Where the lower Courts, after duly considering a plea of limitation, have arrived at an erroneous decision, the error is not an irregularity within the meaning of Section 70 (1) (*a*) of the Punjab Courts Act, specially where the question of limitation is a doubtful one, and such error is not sufficient cause for revision. 22 P. R. 1886, *followed*.

Quaere—Where *A* takes over the liability of a debt due to *C* by *B*. does the period of limitation for a suit by *A*. for the recovery of the money from *B*. commence from the date of payment of the debt by *A* to *C*. or from the date of *A's*, taking over the liability, in other words, is the case governed by Article 61 or by Article 120, Schedule II, Limitation Act. (Chevis, J.)

Jallu *v.* Samand.—11 I. C. 60; 231 P. W. R 1911; 204 P. L. R. 1911;

——Waste or 'Banjar' land-paper delivery—Burden of proving 12 years adverse possession—Distinction between, waste or banjar land and cultivated land.

18 P. L R. 1914; 19 P W.R. 1914; 21 I C. 972.

LIMITATION ACT S. 3.

——*Construction.*

Held, that the statutes of limitation must be strictly construed and that no man is to be deprived of rights which would by law belong to him unless the specific provisions of law which are alleged to take away those rights can be shown to apply clearly and in precise terms to his case, 56 P. R. 1903 at p. 259; 93 P. L. R., 1903 at p. 389 *referred to*. It is a well recognised priuciple of law, that possession cannot be adverse against a person who has not (either on his own account or through his predecessor in title) an immediate right to possession I. L. R. 4 Cal. 327, 27 Bom. 51 *referred to*. (Reid, C. J. Kensingtone, and Rattigan, JJ.)

Sunder *v.* Salig Ram.—34 P. L. R. 1911; 33 P. W. R. 1911; 26 P. R. 1911; 9 I. C. 300 F. B.)

— *S. 3—Plea of limitation—Objection taken too late—Law on the point—Suit for pre-emption—Purchaser reselling property—Second vendee not impleaded within the period of limitation.*

In the Original Court, if a plea of limitation is taken before the issues are fixed, it must, of course, be entertained and decided. If it is taken by the defendant at a later stage and if it can be decided on the existing issues and on the record as it stands there, the Court is bound to take note of it and decide it. This rules holds good whether the plea has been actually taken or not, if matter has in any way come to the notice of the Court. But if after the issues in the case have been fixed and the case has proceeded to some length, a defendant raised the question of Limitation and the Court finds that in order to decide that question fresh issues of fact have to be gone into and additional evidence taken, then the Court has the option of refusing to entertain the plea. When a case has passed out of the Original Court and is before a Court of Appeal the rule is probably the same. But an Appellate Court has generally option of refusing to listen to a plea of limitation even though it can be decided without any further enquiry.

In a suit for pre-emption where the vendee of property from the person who first purchased the property was not added as party within the period of limitation, held the suit was barred as against him. (Johnstone and Chevis, JJ.)

Shah Muhammad *v.* Piara Mal.—84 P.R. 1911; 55 P.W.R. 1911; 13 I C. 792.

——*S. 3—Plea of limitation—Pure question of law can be raised for the first time in appeal.*

An Appellate Court can take cognizance of the question of limitation for the first time, if it arises upon the pleadings or upon the allegation and if upon the facts already on the record the suit is clearly barred by time, and no question of fact has to be inquired into so as to enable the Court to decide the point of limitation. (Chevis and Shadi Lal, JJ.)

Gulab Mal *v.* Shujawal.—259 P.L.R. 1914; 25 I.C. 354.

LIMITATION ACT Ss 3, 4 AND 5.

— *S. 3. Art. 164, Ex-parte decree, application to set aside—Applicability of Limitation Act, Art. 164*

Article 164 of the second schedule of the Limitation Act, IX of 1908 is not in applicable to an application to set aside an ex-parte decree made after the Act came into force when the suit was decided before the Act came into force Section 3 of the Act clearly lays down that the provisions of the Act apply to all suits, appeals and applications filed after the coming into force of the Act. (Johnstone, J.)

Zaib-un-Nisa, *v.* Ghulam Fatima 70 P. L. R. 1911; 265 P. W. R. 1911; 10 I. C. 823.

— *Ss. 4 and 28 Sch. 2 Art. 118.*

Held, that section 4 of the Limitation Act, 1877, has no bearing on defences and pleas, but only on suits or appeals and so forth.

Held, also that section 28 of the Limitation Act. 1877, can not apply to persons in possession of property against whom a suit has been brought in respect of that property so as to prevent them from offering any defence they please. (Johnstone, J.)

Baldeo *v.* Gajwa.—26 P.L.R. 1907.

— *S. 4—Explanation—Application for leave to sue in forma pauperis filed within limitation period—Full Court-fee paid on expiry of limitation period..*

An application to sue in *forma pauperis* was filed before limitation period for the suit had expired. The defendant objected that the plaintiff was not a pauper. The plaintiff thereupon paid the necessary Court-fee but then the limitation period had expired. *Held*, that the plaintiff must be held to have instituted his suit not when he paid in the full Court-fee but on the date when he filed his application for leave to sue as a pauper and that his suit was not barred by limitation. (Clark, C. J. and Reid, J.)

Raja Ram *v.* Tilok Chand.—59 P. R. 1903; 129 P. L. R. 1903;

— *S. 4—Courts duty.*

Held, that whether a defendant pleads limitation or not in respect of the whole or a part of the claim, the original and the Appellate Court are bound *suomotu* to see it upon the allegation in the plaint the suit is within time as a whole or in part. (Rattigan and Williams, JJ.)

Mst. Nehal Devi *v.* Kishore Chand.—97 P.R. 1910; 142 P.W.R. 1910; 11 P.L.R. 1911; 8 I.C. 999.

— *S. 5—Appeal—Civil vacation of September to be observed in Revenue Courts—Combined effect of the notification of the Punjab Chief Court under S 67 of Act XVII of 1884 and that of the Financial Commissioners under Section 102 of Act XVI of 1887.*

Held, that the combined force of the Notification of the Punjab Chief Court relative to Civil summer vacation under S. 67 of Act XVIII of 1884 and that of the Financial Commissioner in the usual form under S. 102 of Act XVI of 1887 has the effect of making whole of September a holiday for Revenue Court, although a

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Revenue Court taking advantage of S. 102 (2) of the latter Act may open for work during September, but this cannot deprive the litigants of the benefit of S. 5 of the Indian Limitation Act (XV of 1887). (J. Wilson, F. C.)

Phullu *v.* Dhanna.—9 P. W. R. 1908 Rev.

——*S 5—Appeal—Depostting appeal in the box put up for the purpose—Proper presentation—Sufficient cause.*

Held, that dopositing a memo of appeal in the box put up by an Appellate Court for the purpose, amounts either to a proper presentation of it to the Court or is under second clause of S. 5 of the Indian Limitation Act (XV of 1877), a sufficient cause for not presenting it within the time prescribed therefor; and that the presumption is that it has been deposited therein by the appellant or by any other person duly authorised on his behalf.

Held, also that whether the circumstances disclosed, in a particular case constitute a sufficient cause so as to bring it within the second paragraph of S. 5 of the Indian Limitation Act XV of 1877 is an important question of law under S. 70 (*b*) (*a*) (Rattigan J.)

Mela Mal *v.* Natha Singh,—71 P. W. R. 1908.

——*S. 5—Appeal filed with delay—Sufficient cause—Illness—Imprisonment—Review*

The prosecution in good faith of an application for review or to set aside an *ex-parte* decree is a sufficient cause within the meaning of section 5 of the Limitation Act for admitting an appeal filed beyond time, and the time occupied in such proceedings may be allowed to be deducted from the period fixed for the filing of the appeal.

An application made under section 108 of the Civil Procedure Code to set aside the decree was dismissed on the ground that the decree was not an *exparte* one, and that the petitioner's only remedy was to apply for review of judgment or appeal to the Superior Court. On appeal, in explanation of the limitation having been allowed to expire, it was urged that the period taken up in conducting the proceeding to set aside the *ex-parte* decree should be deducted under section 5 of the Limitation Act. It was further prayed for by the appellant that the delay which occurred while he was engaged in getting an order from the District Judge declaring the termination of guardianship of guardian appointed by Court and of his attainment of majority and the period of one month for which he was imprisoned should be excused.

Held, that there was sufficient cause for the delay to be excused. 183 P. R. 1888 (F. B.), *followed*. 23 Cal. 325; 21 Bom. 101; 8 M. I. A. 160, *referred to*.

Like illness and other disabilities of similar nature imprisonment is a good excuse for delay in filing appeal. (Chatterji and Anderson, JJ.)

Pt. Maharaj Narain *v. Mst.* Banoji 115 P.L.R. 1904; 21 P.R. 1904.

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——*S. 5—Applicability of—Application to bring legal representative on record.*

S. 5 of the Limitation Act does not govern applications to bring on record the legal representatives of a deceased respondent. (Chevis and Harrison, JJ.)

Shah Mahomed *v.* Karam Ilahi.—1922 Lah 131 ; 65 I. C. 121.

——*S. 5 Art 166—Applicability—Execution sale—Application set aside—Limitation.*

The provisions of S. 5 of the Lim. Act are not to be applied for extending the limit of 30 days prescribed under Art. 166 of the Act. (Chevis, J.)

Asa Nand *v.* Jhangi Ram—29 P. L. R. 1919 : 2 P. W. R. 1919; 50 I. C. 610.

——*Ss 5, 6, 7, 8 and 14—Applicability—Pre-emption—Suit for—Defect of parties—Application to bring in proper party out of time—Dismissal of suit.*

A suit for pre-emption in respect of a sale was filed against the two joint vendees, but it appeared that one of them had died previously to the suit. An application to bring his legal representatives on the record was not made till after the period fixed for institution of the suit expired.

Held, that the suit being barred against the representatives of the deceased vendee was really barred against the surviving vendee.

The period of limitation could not be extended as section 5 and 14 of the limitation Act were not applicable and the provisions of Ss. 6 and 7 did not extend to suits to enforce a right of pre-emption under S. 8 of this Act. (Rattigan, C J. and Martineau, J.)

Mst. Hussain Bibi *v.* Hakim—86 P. R. 1919 ; 52 I. C. 587.

—— S. 5—Applicability of, to press Act, S. 17—Application to the High Court. *See* Press Act, S. 17.

16 P.R. 1914; 32 P.W.R. 1914 Cr.; 126 P.L R. 1914; 22 I.C. 1006.

——*S. 5—Applicability of—Prov. Insolvency Act, proceedings under—Applicability of S. 5.*

2. Section 5 of the Indian Limitation Act, IX of 1908, can be applied to cases under the Pro. Insolvency Act. 34 All. 496, *Followed.* (Chevis, J.)

Ram Kishen *v.* Umrao Bibi—80 P. W. R. 1916 ; 33 I. C. 730.

——S. 5.—Applicability to appeal under Provincial Insolvency Act—"Sufficient cause" Meaning—Review if and when a sufficient cause.; (Scott Smith, J.)

Waryam Singh *v.* Wadha—89 P. R. 1918 ; 87 P. L. R. 1918; 88 P. W. R. 1918; 46 I.C. 588.

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——*S. 5 Art 173—Application for—Review—Limitation—Extension of Cross Review.*

Where one party being dissatisfied with a decree applies for its review, the time for cross review by the other party should be extended as one is a counterblast to the other. (Shadi Lal and Le Rossignal, JJ.)

Musammat Nikki *v.* Gujar Mal—94 P.W. R. 1917; 114 P. L. R. 1917; 42 I. C. 54.

——*S. 5 Art 164—Application to set aside exparte decree—Limitation-delay.*

S. 5 does not apply to applications under art. 164 of the Lim. Act to set aside exparte decrees. (Chevis, J.)

Khairati *v.* Umar Din—1922 Lah. 266; 66 I. C. 270.

——*S. 5.—Criminal appeal.*

Where a criminal appeal was filed in the wrong Court was returned for presentation to the proper Court, and was there presented on the date of the return, *held* that the delay should be excused under S. 5 of the Act as, in the case of criminal appeals, it could not be said that there was a successful litigant who had secured a valueable right. (Scott Smith, J.)

Surta Singh *v.* Emperor.—1 Lah. 508; 59 I. C. 556.

——*S. 5—Delay in applying for copies—Indulgence.*

A court is not bound to show indulgence to a litigant who has not been prompt in seeking the remedy available to him, *e. g.* in applying for copies preparatory to filing an appeal. (Abdul Raoof, J.)

Madan Gopal *v.* Malawa Ram—68 I. C. 777.

——S. 5- Discretion—Appeal—Presentation out of time—Sufficient Cause for—Question as to not considered by appellate court—Second Appeal—Maintainability.

77 P.R. 1917.

——*Ss 5, 14—Discretion—Due diligence.*

S. 5 of the Indian Limitation Act allows a discretion the wording being "may be admitted" while S. 14 allows no such discretion, the words being "shall be excluded." A litigant who takes action without going to the trouble and expense of taking legal advice cannot be said to have exercised due diligence and must take the consequences if he makes mistake. A litigant who counsults a legal practitioner of inferior standing and little experience is in no better position, but when the advice is that of a pleader of the Bar, and is given after due deliberation, and is followed, the Court cannot hold, simply because it holds that the advice was utterly wrong, that the litigant has not exercised due care and diligence within the meaning of section 14 of the Indian Limitation Act. (Rattigan and Chevis, JJ.)

Fuhhur Ali *v.* Sahib Nur.—254 P.L.R. 1913; 159 P.W.R. 1913; 20 I C. 3.

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—*S. 5—Discretion—May be admitted—S. 14.*

While Section 5 of the Indian Limitation Act, 1908, allows a discretion to the Courts the wording being "may be admitted" section 14 allows no such discretion the words being "shall be excluded." (Rattigan and Chevis, JJ.)

Mst. Hussaina *v.* *Mst.* Sahib Nur.—254 P. L.R. 1913; 159 P.W.R. 1913; 20 I. C. 3.

—*S. 5—Discretion—Delay excused—Appeal.*

No second appeal lies as to the exercise of discretion by a lower Court under section 5 of the Limitation Act. 25 A 71; 203 A. W. N. 1902; 26 A. 327; 23 A. W. N. 1904, *followed.* (Johnstone, C.J.)

Asa Ram *v.* Budhu Mal.—88 P. R. 1916; 132 P.L.R. 1916; 43 P.W.R. 1916; 35 I.C. 67.

—*S. 5.—Discretion of Lower Appellate Court interfered with in second appeal—Effect of the change brought in the law by the New Punjab Courts Act—Pre-emption case—Return of plaint for want of jurisdiction—Its representation—Lim. Act. S. 14.*

Held, that in second appeals Chief Court should interfere in exceptional cases only with the discretionary power given to the 1st Appellate Court by section 5 of Act IX of 1908 particularly when such indulgence has been shown owing to the change brought by the New Punjab Courts Act III of 1914, on the ground that the appellant was advised (though erroneously) by his Legal adviser that the appeal could be presented within 60 days.

Where a plaint in a pre-emption case is returned for presenting it to a competent Court on the ground that the pre-emption money exceeded the Munsiff's pecuniary jurisdiction and after excluding the time under section 14 of Act IX of 1908. It was a few day's late when it was refiled:

Held, that the suit must be taken as instituted on the day of the first presentation to the District Judge. The proper course in such a case is to send the case to the Court having jurisdiction. (Johnstone, C. J.)

Azam Ali *v.* Akhtar Hussain—18 P. W. R. 1916; 33 I. C. 805.

—*S. 5—Discretion of Court—Refusal to excuse delay—No interference in second appeal.*

Held, that the District Judge could not be said to have exercised his discretion arbitrarily or unreasonably and it being for him to decide whether he would grant the extension of time or not the Chief Court did not feel justified in interfering on second appeal. (Rattigan, J.)

Hardhan *v.* Mam Chand 92 P. R. 1916; 36 I.C. 614.

—*S. 5—Ex-parte order—Excuse of delay—Admission of appeal presented out of time—Ex-parte admission of a appeal—Open to consideration at instance of respondent—Practice of Indian Courts disapproved.*

The admission of an appeal after the period of limitation deprives the respondent of a valuable right, for it puts in peril the finality of

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the decision in his favour. Where therefore an order for such admission is made ex-parte, it is open to reconsideration at the respondent's instance.

The question of limitation should not however be left open till the hearing of the appeal, although this may have hitherto been the usage in India. The Courts in that country should adopt a procedure which will secure at the stage of admission the final determination of any question of limitation affecting the competence of an appeal. (Lord Parker of Waddington, Wrenbury, Sir John Edge, Lawrence Jenkins and Mr. Amir Ali, JJ.)

Krishnaswami Pani Kondar *v.* Ramasawmi Chetty.—2 P.L.R. 1918; 43 I.C. 493.(P. C.)

——*S. 5—Expiry of period of limitation for suit when Court is closed.*

The period of limitation for a suit triable by a Munsiff of the second class expired during the period when his Court was closed. The plaint was presented on the day when his Court re-opened. *Held*, that the suit was not barred by time as Section 5 of the Limitation Act saved limitation, (Robertson, J.)

Gopal Mal *v.* Suba.—30 P.L.R. 1903.

——*S. 5—Interference with discretion.*

The High Court refuse to interfere with the discretion of the Judge in a Letters Patent Appeal. (Shadi Lal, C.J. and Martineau, J.)

The Municipal Committee, Chiniot *v.* Bashi Ram.—1922 Lah 170.

——*S. 5 Sch. 2 Art. 151—Appeal filed without copy of decree—Sufficient cause.*

Under the Punjab Courts Act, section 16, it is not necessary for Judges of the Chief Court to pronounce judgment in open Court on dates fixed beforehand and duly announced to parties or counsel. When judgment passed by a Single Bench, dismissing a petition for dissolution of marriage was delivered on the 12th May 1902, and appeal against the judgment was filed on the 7th June 1902, when it was barred under article 151 of the Limitation Act, and the appellant urged that the delay be excused on the ground that neither the appellant nor his counsel was given any notice of the date when judgment was to be pronounced—*Held*, that the appellant had not made out sufficient cause for the delay to be waived;

When the appellant seeks benefit of section 5 of the Limitation Act, causes which led to the delay in filing the appeal after the expiry of the limitation period should be stated when the appeal is filed.

Uuder section 544 of the Civil Procedure Code a copy of a decree is a necessary accompaniment to a valid appeal.

It is not in the power of the Appellate Court to dispense with the copy of the decree.

An order rejecting a petition for dissolution of marrirge is a decree and appealable as such. (Clark, C.J. and Robertson, J.)

C. *v.* C. and B —22 P.R. 1903; 91 P.L.R. 1903.

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——*S. 5.—Limitation appeal filed with delay—Sufficient cause—Guardian and Ward—Laches on the part of guardian in filing appeal.*

Before a minor can claim the benefit of section 5 of the Limitation Act in case of an appeal on his behalf being filed by his guardian after the expiry of the period of limitation prescribed for the appeal it must be shown that the guardian had sufficient cause for not filing the appeal within limitation. 20 Bom., 104 *referred to.* (Reid, J.)

Prabh Dial *v. Mst* Ishar Devi—164 P L. R. 1906.

——*S. 5—Limitation—Forma pauperis—Application for leave to appeal as pauper made after time—Payment of Court-fee—Sufficient cause.*

Held, that section 7 of Act XV of 1877 does not apply to an application for leave to appeal in *forma paupris* made in the name of a minor by his next friend. It must be made within the time allowed under article 170 of the 2nd Schedule to the Act. I. L. R. XVIII Mad. 484 *followed.*

Held, also, that an unstamped memorandum of an appeal is to be considered presented on the date on which the Court-fee required thereon is paid and that presenting an application to appeal as *pauper* not made in good faith and within the time prescribed therefor, is not sufficient, under section 5 of Act XV of 1877, to bring it within, if it is otherwise out of, limitation on that date. 78 P. R. 1906 *followed.* (Robertson and Shah Din, JJ.)

Sewa Datt Parshad *v.* The Collector of Lahore—141 P. W. R. 1909; 4 I C. 1002.

——*Ss. 5 and 12—Limitation—Time requisite for obtaining copy of judgment—Sufficient cause—Punjab Courts Act XVIII of 1884 S. 70 (1) (b).*

Held, that Section 12 of the Limitation Act, 1877 is not applicable to applications made under section 70 (1) (*b*) of the Punjab Courts Act and time spent by the petitioner in obtaining copies of judgment and decree of the lower appellate Court cannot be allowed in computing period of limitation prescribed for such application. (Rattigan, J.)

Kishen Dial *v.* Ram Ditta—20 P.R. 1907; 48 P.L.R. 1907.

——*S. 5—Second appeal—Delay in filing judgment of trial Court—Excusing delay.*

The practice of the High Court office returning second appeals allowing time beyond period of limitation to file judgments is ultra vires and Section 5 Limitation Act cannot be invoked when judgment of the trial court is filed after limitation without any sufficient cause. (Le Rossignal, J.)

Mst. Rajan *v.* Kuria—4 Lah. L. J. 475; 39 P. L. R. 1922.

——*S. 5—Sufficient Cause.*

A decree was passed on 10th July, 1911, application for copy was made the same day, and supplied on 28th July, 1911. Application for leave to appeal in *forma pauperis* accompained by the grounds of appeal was presented to the Chief Court on 16th October, 1911, the 1st working day after the long vacations and was rejected on 30th

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October, 1911, full stamp was put in on 27th November, 1911. *Held*, that under the circumstances there was sufficient reason for allowing extension under section 5 of the Indian Limitation Act. IX of 1908. (Chevis and Scott Smith, JJ.)

Bhagwan Das *v. Mst.* Balwanti.—74 P.R. 1916; 173 P.W.R. 1916; 30 P.L.R. 1917; 36 I.C. 84.

——*S. 5—Sufficient cause—Amendment—Appeal—Limitation—Extension of time—Subsequent amendment of decree appealed against—Effect—H. Law—Joint family - Debt contracted by two members—Suit against all for recovery of—Onus of proof of necessity.*

The plff. Bank sued to recover money borrowed by defts. Nos. 1 and 2 as against the managers of a joint Hindu family, but it was not specifically stated or claimed that the money had been taken for such necessary or family purpose as would bind the other members of the joint family, while the other defendants expressly pleaded that they were not bound by the debt, as it has been contracted, if at all, by defts.' 1 and 2 for their own personal purposes and not for any family necessity.

On 24th June 1914 the Subordinate Judge delivered judgment in favour of the plff. but the decree omitted to specify that the decretal amount could be recovered from the house mortgaged to the plff. On 30th June 1914 plff. applied for amendment which was not granted till 19th November 1914. On 19th February 1915 the defts. appealed.

Held, that the defts. were not obliged to appeal from the decree of June 1914 at a time when the plff. had within the period of 90 days allowed for an appeal already applied for an amendment and that in any event the Court would grant an extension of time under S. 5 of the Lim. Act.

Held, also, that it was for plff., in order to bind the other members of the joint Hindu family to prove affirmatively that the money was borrowed by defts 1 and 2 for necessary or family purposes. 21 P. R. 1912, *referred to.* (Rattigan, C. J. and Scott Smith, J.)

Harkishen Singh *v.* Lahore Bank, Limited in Liquidation—64 P. R. 1919 ; 51 I. C. 712.

——S. 5—Sufficient Cause—Appeal barred—Court fee paid after period of limitation—Reasonable diligence not shown—Delay not to be excused Section 149 Civil Procedure Code.

130 P.L. R. 1913; 55 P.R. 1913; 19 I.C. 788.

——S. 5—Sufficient Cause—Appeal, delay in filing—Carelessness of Pleader—Not a ground for extension of time.

109 P.W.R. 1911; 176 P. L. R. 1911; 10 I C. 433.

——*S. 5—Sufficient Cause—Carelessness—No ground for extension.*

Held, that failure to present a copy of the decree appealed against within the time allowed for an appeal amounts to not filing the appeal at all and time cannot be extended for the purpose of making up the deficiency, particularly when the Appellant has

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already lost the opportunity once granted to him, for doing so. 8 P. W. R. 1911, *followed*. (Chevis, J.)

Achhar Singh *v.* Nikku.—25 P. L. R. 1914; 2 P. W. R. 1914; 23 I C. 319.

——*Ss. 5 and 2 (7)—Sufficient Cause—Carelessness—Appellant, duty of—"good faith," meaning of.*

In order to be entitled to the benefit of S. 5 of the Lim. Act, and appellant must act in good faith *i. e.* with due care and attention.

An appellant relied upon an unauthorised publication known as the "Legal Diary" as having misled him as to the duration of the vacation of the Chief Court, and prayed for the delay in the presentation of the appeal being excused.

Held, that he had not acted with due care and attention and that the cause shown was not sufficient to entitle him to an extention of time under S. 5 of the Lim. Act. (Shadi Lal and Broadway, JJ.)

Jaidial Mal *v.* Amar Nath—27 P. W. R. 1917; 37 I.C. 828.

——*S. 5—Sufficient Cause—Copy of decree—Appeal presented without copy of decree.*

Held, that an appeal filed with a copy of the Lower Appellate Court's judgment but without a copy of the decree is not legally presented and becomes barred by time if a copy of the decree is annexed thereto after the period allowed for the appeal has expired.

The Appellant's plea of her being a *pardah nashin lady* and not knowing that a copy of the decree was required is not sufficient to extend the time under section 5 of Act IX of 1908. (Reid, C.J. and Ryves, J.)

Mst. Masum Begam *v.* Madan Mohan Lal.—8 P.W.R. 1911; 9 I.C. 222.

——S. 5—*Sufficient Cause—Copy of decree—Appeal filed without copy of decree—Appelant directed to file copy on next date—Copy filed on that date after expiry of period of limitation—Sufficient.*

A suit was decided on 25th August, 1910, and an appeal against the decision was filed on 31st August, 1910. A copy of the decree, however, was not filed with the memorandum of appeal; the appellant's pleader was directed by the officer receiving the appeal to file a copy on the next date of hearing which was fixed for 27th October, 1910. A copy of the decree had actually been obtained on the 31st August, 1910, after the appeal was filed, but the appellant's pleader, misled by the aforesaid order of the officer of the Court did not file the copy till the 27th October.

The appellate Court was closed during September and the period of limitation prescribed for filing the appeal expired on 1st October, 1910.

Held, that the appellant was entitled to the benefit of S. 5 of the Limitation Act, and had sufficient cause within the meaning

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of that section for not filing within limitation the appeal with a copy of the decree. (Shah Din, J)

Imam Din *v.* Banshi Ram.—189 P. W. R. 1912; 14 I. C. 244.

—— *S. 5—Sufficient Cause—Copy of decree*—Bona fide *mistake as to date of compilation and delivery of copy of decree—Cause of delay not explained when appeal filed, effect of.*

Held, that a *bona fide* mistake as to date on which the applicant was told by the copying department to come to take delivery of copy of decree is sufficient cause to justify extension under section 5 of the Limitation Act.

Therefore, where an application for copy was made on 17th May, and the applicant was told to come on 21st May for it but it was not ready for delivery till 22nd May and was taken delivery of on 24th May.

Held, also that the period from 17th to 24th May should be allowed. *Held*, further where an appellant at the time of filing his appeal, had no notion that it was time barred he cannot be expected to have explained the cause of delay at the time of filing the appeal. 22 P. R. 1903, *distinguished*. (Chevis, J.)

Mohan Ram *v.* Muhammad Khudad Khan.—71 P.W.R 1911; 79 P.L.R. 1911; 9 I.C. 607.

——*S. 5—Sufficient Cause—Copy of decree—Decree not filed at time of appeal by oversight but copies of desposition filed omission not found by Court in time on account of carelessness—Sufficient Cause.*

In filing an appeal, Counsel for the appellant, by a piece of carelessness omitted to file a copy of the decree appealed against but instead put in a copy of a deposition. The mistake was not noticed until long after the expiry of the period of limitation for filing the appeal.

Held, that the Court should have allowed the copy of the decree to be filed, and should have extended the period of limitation under section 5 of the Indian Limitation Act IX of 1908. (Reid, C.J.)

Harjas Mal *v. Mst.* Kalni.—85 P.R. 1913; 104 P.W.R. 1913; 173 P.L.R. 1913; 19 I.C. 438.

—— *S. 5 and 12—Sufficient Cause—Delay in obtaining Copy—Appeal—Time open to obtain copies—Sufficient Cause—Duty of the copying Department—Order of the Chief Court, Vol. 1, R. XXIII (1) and (2).*

Held, that, in computing the period of limitation, for an appeal, &c., the time extending from the date of application for copy of the judgment, &c., appealed against, up to the date on which the copy is ready for delivery, is to be deducted only where the applicant is informed of the latter date. But where it is not shown that the applicant was aware of the date, this date of actual delivery is to be reckened this date of readiness, or at least such a delay should be considered sufficient cause within the meaning of S. 5, Limitation Act. (1908). It is the duty of the Copying department, under Rule XXIII (1) and (2) of the Chief Court Rules and Orders, Vol. 1 to inform the applicant of the date on which the copy is ready for delivery. (Rattigan, J.)

Sarkara *v.* Nawab.—11 P. W. R. 1912; 13 I. C. 850.

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——*S. 5—Sufficient Cause—Delay in filing revision—Rejection an of review application—Subsequent delay in filing petition for revision.*

The appellant in this case applied to the Appellate Court for review of its judgment; his application was rejected; very nearly two months afterwards he filed a petition in the Chief Court for revision of the judgment of the Appellate Court.

Held, that even if there were any reasonable grounds for filing a review application, the petitioner should have filed his petition for revision within a reasonable time after his application for review had been dismissed, and, consequently, there was no sufficient cause for not filing the revision within the prescribed period. (Shah Din, J.)

Ganda Singh *v.* Jawala Singh.—140 P.L.R. 1911; 222 P.W.R. 1911; 10 I.C. 129.

——*S. 5—Sufficient Cause—Discretion—Exparte order admitting appeal—Power to set aside ex-parte order.*

Mere presentation of an application for leave to appeal as a pauper is not 'sufficient cause' within the meaning of Section 5 of the Limitation Act.

Head Note to Punjab Record 47 of 1899 is misleading.

When a Divisional Judge passes an ex-parte order admitting an appeal under Section 5 of the Limitation Act the Respondent at the hearing of the appeal may take objection that there was no sufficient cause for the appeal to be filed after the expiry of the period of limitation prescribed for appeals, and the successor to the Judge admitting the appeal may interfere and reject the appeal. (Anderson and Harris, JJ.)

Mst. Murad Bibi *v.* Manohar Lal.—159 P.L.R. 1901.

——*S. 5—Sufficient Cause—Memorandum not signed by pleader—Extension of time—Exparte admission—Effect.*

S. 5 of the Act must be applied under equity to a case where an appeal is filed in time and no laches can be atributed to the appellant, but the pleader through oversight did not sign the memorandum of appeal. An order admitting an appeal *ex parte*, is not binding on the respondent, who can at the hearing raise any objection to such admission that is legally possible.. (Broadway and Abdul Qadir, JJ.)

Balwant Singh *v.* Sunder Singh, 63 I. C. 726

——*S. 5.—Sufficient cause—Mistake of law.*

A mistake of law, no matter how honestly made, cannot be held to amount to sufficient cause, unless it can be said that such mistake was made in "good faith" that is, not with standing due care and attention on the part of the appellant.

Held, that, a Court should no doubt, give a liberal interpretation to the words "sufficient cause," but its interpretation must be in accordance with judicial principles and with due regard to the respndent's side of the question.

The period for preferring an appeal must not be extended simply

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because the appellant, case is hard and calls for sympathy. (Rattigan and Beadon, JJ.)

Fakir Chand *v.* The Municipal Committee of Hazro.—59 P. R. 1913; 59 P L. R. 1913; 88 P. W. R. 1913; 18 I. C. 37.

——*S. 5—Sufficient Cause—Mistake of pleader—Appeal filed out of time under advice of pleader—Pleader misled by change in law—Sufficient Cause.*

It is not an inflexible rule of law that in no case can the circumstance that a litigant has, under the erroneous advice of Counsel or Pleader, presented an appeal out of time be deemed a sufficient cause within the meaning of section 5 of the Limitation Act. The true rule is whether, under the special circumstances of each case, the appellant acted under an honest, though mistaken, belief formed with due care and attention or there was any negligence or inaction or want of *bona fides* on the part of the appellant. 12 Ind. Cas. 677; 19 Ind. Cas. 931; 17 C. W. N. 807, *followed.*

Where, therefore, an appellant filed an appeal in the Court of a District Judge after the specified period of 30 days under the advice of a legal practitioner, who was misled by a change in the law of limitation relating to appeal: *Held,* that there was sufficient cause within the meaning of section 5 for not filing the appeal within the prescribed period of limitation. (Shah Din, J.)

Azimullah *v.* Gokal Chand.—37 P.W.R. 1916; 32 I.C 640.

——S. 5—Sufficient Cause—Mistake of Vakil—Delay in filing appeal under Companies Act wrong belief of pleader—No excuse.

90 P.L.R. 1915; 29 I.C. 265.

——*S. 5—Sufficient cause, mistake of Vakil—Extention of time—Grounds for Legal adviser's mistake when a ground.*

Held, where a second appeal is clearly competent but the appellant resorts to revision and after expiry of the period prescribed for an appeal converts the revision into appeal, the date of making up the deficiency in the Court-fee is to be regarded as the date of the proper presentation of the appeal; and that such a mistake is not *bona fied* having regard to the provisions of section 2 of the Indian Limitation Act IX of 1908, and consequently is quite insufficient under section 5 of the Act. (Shadi Lal and Broadway, JJ.)

Resal Singh *v.* Shadi—95 P. R. 1917; 174 P. W. R 1917; 13 P. L. R. 1918; 43 I. C. 317.

——*S. 5—Sufficient cause—Mistake of pleader—Appeal—Delay in filing—Sufficient cause—Pleader's mistake if a.*

Held, that a legal adviser's mistake in order to justify an extension of period prescribed for presenting an appeal must be a *bona fide* one; and nothing shall be deemed to be done in good faith which is not done with due care and attention—95 P. R. 1917 *followed.* 118 P. R. 1908, 9 P. R. 1914, 67 P. R. 1917. 104 P. R. 1917 (P.C.) *referred to.* (Broadway J.)

Ahmad Hassan *v. Mst.* Shams-ul-Nisa—10 P. L. R. 1918; 69 P. W R. 1918; 45 I. C. 542.

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——S. 5—"*Sufficient Cause*"—*Neglect of a pleader's clerk to file appeal within time—Documents not proved and not relied on, whether can be considered in judgment.*

In this case, the appellant's counsel prepared grounds of appeal and gave them to his clerk 9 days before expiry of the period of limitation, but the clerk, finding that a copy of the judgment of the first Court was wanting, directed the client's agent to get the same, and kept the appeal by him till the said copy was obtained, and thus forgot to file the appeal within time.

Held, that "sufficient cause" within the meaning of section 5 of Act IX of 1908, for not filing the appeal within time had been made out, though the Pleader is not free from blame, as it is the duty of counsel to see that their clients' appeals are presented within time.

Held, also, that documents which are neither produced, nor proved, nor admitted in evidence in the case before the Court, should not be considered in its judgment, though they may have been produced in another case between the same parties. (Shah Din and Scott Smith, JJ.)

Mst. Putli *v. Mst.* Jawala Devi.—7 P.L.R. 1912 Supp; 126 P.W.R. 1912; 16 I.C. 488.

——S. 5—Sufficient Cause—Notice of judge—Delay in presentation of appeal—Judgment of lower appellate court not pronounced in open court nor after notice to parties as required by O. 41 R. 30 C. P. C. Delay excused.

27 P.R. 1919.

——*S. 5—Sufficient Cause—Pauper appeal, whether bars subsequent appeal—Sufficient Cause for extension of time.*

Against a decree dated 18th May, 1908, the defendant applied to the Chief Court on 16th June, 1908, for leave to appeal as a pauper. An inquiry as to his financial condition having been ordered on 24th February, 1909, the District Judge reported that he was a pauper. After that his father died leaving property which he inherited. Upon this the Chief Court held that he was not a pauper and in compliance with the Court's order he paid the necessary Court-fee on 22nd June, 1909:

Held, that, under the circumstances, the appellant was entitled to the benefit of Section 5, Limitation Act, 47 P. R. 1899; 26 C. 925, *followed*. (Johnstone and Shah Din, JJ.)

Shadi Khan *v. Mst.* Bebee Umdan Begam.—52 P.L.R. 1912; 84 P.W.R. 1912; 13 I.C. 73.

——*S. 5—Sufficient Cause—Review—Time taken in—Delay in appeal—Time taken for review, if excuse—Fresh evidence on appeal.*

Plaintiffs as contractors were simultaneously doing for defendant, Roman Catholic Mission, work on the Church at West Ridge, and on a school house, &c., in Rawalpindi. For the school work a grant in aid had been promised by Government, but when the Inspector of School arrived defendant had apparently not paid plaintiffs any-

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thing for the school work. To show the Inspector that substantial progress had been made in order that he might pass grant it was arranged that payments made to the plaintiffs against the West Ridge Work be treated as having been made for the school. To adjust this transfer on paper plaintiffs gave defendant a receipt for the sums as paid for the school work and the defendants gave plaintiffs another receipt for those sums. This receipt was intended to import a refund by plaintiffs to defendant of the sums previously paid for West Ridge Work.

The plaintiffs claimed a certain amount for balance due for work done on West Ridge. The suit was dismissed on the ground that the plaintiffs failed to show that any balance remain unpaid. Application for review was filed by the plaintiffs and the receipt given for refund was filed with the application for review and it was stated that the plaintiffs had found the receipt which they had supposed was lost. The application for review was rejected. On appeal the Divisional Judge on the strength of the receipt decreed the claimed, holding that there was good ground for review.

The appeal though otherwise barred was within limitation allowing the period spent on review.

Held, that the view taken by the Divisional Judge was correct, the appeal though barred was rightly admitted and the receipt produced by the plaintiff, fully established their case. (Johnstone and Shadi Lal, JJ.)

Winkley *v.* Wasawa Singh—55 P. L. R 1915 ; 50 P W. R 1915 ; 28 I. C. 926.

——S. 5—Sufficient Cause, question not considered by the lower Court, if ground for second appeal.

77 P. R 1917 ; 147 P. W. R. 1917 ; 42 I. C. 343.

—— S. 5—"Sufficient Cause"—Review—Time spent for—Not presenting an appeal within the period prescribed—Whether time spent in applying for review may be excluded in computing the period—Mistake of law—Whether it may amount to sufficient Cause—Limitation Act—(IX of 1908) Ss. 5 and 14—Judicial discretion—Duty of superior Court when it is questioned—Abatement of Suits—Should not be pronoused exparte—Procedure in questioning abatement—Whether review or appeal is the proper remedy—Code of Civil Procedure (Act XIV of 1882) Ss. 365, 366, 368, 371, 588—Substitution of parties in miscellaneus appeal—Sufficient for all stages of a suit. *See* Limitation—Sufficient Cause ;

Brij Inder Singh *v. Lala* Kanshi Ram—104 P. R. 1917 ; 126 P. W. R 1917 ; 127 P. L. R. 1917 ; 42 I C. 43.

——*S. 5—Sufficient Cause—Review—Time spent in—Appeal delay in filing—Review—Time spent in—Reasonable ground for review.*

Time spent in the adjudication of an application for review may be excluded in computing period of limitation prescribed for filing an appeal when there were reasonable ground for believing that the judgment would be altered on review.

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The property claimed by right of pre-emption was a building situated in a lane and not a bazar. Originally the building was purely residential but afterwards the structure of the house was altered and fashioned so that the three rooms abutting on the lane could be used as shops, at the same time the real portions and the upper story of the building were used as residential quarters.

Held, that the building could not be treated as shops and was subject to pre-emption. (LeRossignal, J.)

Hanun Mal *v.* Atma Ram—47 P. L. R. 1915 ; 239 P. W. R. 1915 ; 27 I. C. 799.

—— Ss. 5 and 12—Sufficient Cause—Strong appeal—Extension of time on the ground of appeal being a strong one—Application for copy returned for presentation at another place—Time allowed for journey. (Johnstone and Chevis, JJ.)

Lal Singh *v.* Pala Singh—170 P. L. R. 1912 ; 66 P. W. R. 1912 ; 13 I. C. 714.

—— *S. 5—Sufficient Cause—Time spent in review—Prosecution in good faith—Review persisted in notwithstanding objection to its maintainability—Appeal after rejection of review—Time taken up in review, if must be deducted.*

Where a party prosecutes a review in the face of respondents' objection and protest to its inadmissibility and after the rejection of the review presents an appeal, he is not entitled under section 5 of the Limitation Act, to a deduction of the time taken up in prosecuting review because it could not be said to be prosecuted in good faith" within the meaning of that section. (Johnstone, J.)

H.H. Brij Indar Singh *v.* Lala Kanshi Ram.—130 P.L.R. 1917.

—— *S. 5—Sufficient cause—Time spent in Review—Delay in filing appeal—Review—Time spent in prosecuting when allowed.*

Held, that an application for review must not only have reasonable expectation of success but must also be prosecuted with resonable diligence in order to justyfy an appellant in reckoning off the days spent in the prosecution of the review from the period allowed for filing the appeal. Where, therefore, the plaintiff's suit was dismissed on 15th August, 1914, and on the 10th November 1914; he presented an application for review, which was rejected on 15th December, 1914, without issue of notice. *Held*, that the plaintiff appellant had not prosecuted his application for review with reasonable diligence and was not entitled to deduct the time spent in the review proceedings in order to bring his appeal within time. (Rattigan, C. J. and LeRossinal, J.)

Azizud-Din *v.* Bhag Mal—107 P. R. 1918 ; 103 P. L. R. 1918 ; 125 P. W. R 1918 , 46 I. C. 23.

—— S. 5—Sufficient cause—Appeal—Time taken in obtaining Copy of first Court's Judgment—Deduction of.

Bhan Singh *v.* Gokal Chand.—1 Lah. 83; 53 I.C. 137

—— *S. 5—Sufficient Cause—Time which application for review of judgment was pending.*

Held, that the pendency of an application for a review of a decree or judgment is a good and sufficient cause for not presenting

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an appeal within the prescribed period, but in every such case it is incumbent on the appellant who craves indulgence under section 5 of the Limitation Act, to show that he had reasonable grounds for asking for a review I. L. R. 15 Cal. 242 and 183 P. R. 1888 (F. B.), *followed*. (Rattigan and Williams, JJ.)

Musadi Lal *v.* Badhawa.—100 P.R. 1910; 43 P.L.R. 1911; 8 I.C. 1156.

——*Ss. 5 and 12—Sufficient Cause—Time Requisite—Appeal—Expiry of time on a holiday—Application to obtain copies after the holiday—Appellant not entitled to get benefit.*

Indulgence under section 5 of the Limitation Act on the ground of mistake is only allowed where it is shown that the appellant has acted with due care and diligence.

In computing the period prescribed for an appeal, the time requisite for obtaining copies is excluded only if the application for copies is made while the right of appeal subsists, and an appellant cannot be allowed to let the whole of the period allowed for appeal to expire and then take advantage of the holiday which happens to occur towards the end of that period.

Where, therefore, the last day of limitation expired on a holiday and the appellant applied for copies on the re-opening of the Court and filed his appeal as soon as he got them: *Held*, that the appeal was time-barred; as the appellant had not shown due care and diligence he was not entitled to any indulgence. 25 B. 584; 3 Bom. L.R. 143; 25 B. 586; 3 Bom. L.R. 244, *distinguished*. (Johnstone, C.J.)

Guran Rakha *v.* Bindra Ban.—79 P. R. 1916; 125 P. L. R. 1916; 55 P. W. R. 1916; 35 I. C. 233.

——*S. 5—Sufficient Cause—What is—Appeal—Delay in presentation—Sufficient Cause—What amounts to.*

Where the appellant's mukhtar omitted to file his power of attorney authorising him to present appeal and copy of first Court's judgment with the appeal and filed them long after presentation of the appeal and no reasons were given for the delay the appeal was dismissed as barred by limitation. (Wilberforce, J.)

Dhanna *v. Musammat* Wazir—94 P. L. R. 1918.

——*S. 5—Sufficient Cause—Wrong Court—Appeal filed long out of time—Sufficient Cause—Filed in wrong court—Gross carelessness.*

Where owing to gross carelessness of a pleader, the appeal which should have been filed in the Chief Court was filed in the Divisional Court, but was returned to be presented in the Chief Court and the same was filed long after expiry of period of limitation prescribed for appeals.

Held, that the provisions of section 5 of the Limitation Act were not applicable to the case and the appeal must be rejected as barred by limitation for the appellant under the circumstances of the case had no sufficient cause for not presenting the appeal within the prescribed poriod. (Kensington and Beadon, JJ.)

Mohamda *v.* Ladha Singh.—9 P.L.R. 1914; 23 P.W.R. 1914; 23 I.C. 86.

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——*S. 5—Sufficient Cause—Wrong Court—Criminal appeal filed in wrong Court—Error of law.*

On the 12th January 1920 the petitioner was sentenced by the Additional District Magistrate to two sentences of 4 years' and 9 months' rigorous imprisonment, respectively, the sentences to run concurrently. On the second February 1920, his counsel erroneously presented an appeal to the High Court, which was returned on the 21st of February for presentation to the proper Court and was filed in the Sessions Court on the same day. The Sessions Judge dismissed it as time-barred, relying on 118 P. R. 1908. The petitoiner filed a revision to the High Court.

Held, that the case of 118 P. R. 1908 is distinguishable from the present case on the facts and especially inasmuch as that was a civil Appeal. This appeal being a criminal one, there is no "successful litigant" who has secured any "valueable right". The crown cannot be said to gain anything by the appeal being dismissed as time-barred as all that the Government is, or should be, anxious for is that Justice should be done.

30 Bombay 329, referred to in 118 P. R. 1908. *Held*, also that the appellant who is in jail should not be deprived of the advantage of having his appeal heard merely because his counsel had been somewhat careless in filing the appeal in a wrong Court and the period of appeal should accordingly be extended, (Scott Smith, J.)

Surta Singh *v.* Emperor—1 Lah. 508.

——*S. 5—Sufficient cause—Wrong Court, presentation of appeal in—Mistake.*

Held, that there was not a shadow of excuse for filing the appeal in the wrong Court; that the mistake was inexcusable and the appeal was clearly barred by limitation. (Shadi Lal and Broadway, JJ.)

Nathu *v.* Mohamed Shafi.—2 Lah. L. J. 390.

——*Ss. 5 and 14—Sufficient cause—Wrong Court—Appeal to—Probate—Receiver, appointment of—Appeal to Divisional Court—Subsequent appeal to High Court—Sufficient cause—Extention of time—Minority of appellant, effect of.*

In an application for grant of probate of a will, a Receiver of the property of the deceased was appointed by the District Judge. Against this order an appeal was preferred to the Divisional Court which returned the appeal for presentation to the High Court. When the appeal was presented to the High Court, the period of limitation had expired but the appellant, who was a minor, sought the benefit of S. 5 of the Limitation Act.

Held, that as S. 86 of the Probate and Administration Act clearly specified the High Court as the appellate Court, the appeal was filed in the Divisional Court by carelessness and not by mistake of law; that there was no sufficient cause for not filing the appeal in the High Court within the time prescribed; that the time up in the Divisional Court could not be excluded; that the fact that the appellant was a minor did not justify extension of the period of limitation. (Reid, C.J.)

Mst. Harnam Kaur *v* Sohan Singh.—205 P.W.R. 1912; 15 I.C. 170.

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——*S. 5—Sufficient cause—Appeal Presentation in proper time to proper Court—Return of appeal—Subsequent presentation—Deleay.*

An appeal was presented within the period of limitation to the Divisional Court. But that Court, taking a wrong view of the jurisdiction value returned it for presentation to the Chief Court, where it was filed after the period of limitation had expired.

Held, that, as the appeal was presented in time to the Divisional Court, it was not barred. To save further delay and trouble, the Chief Court, instead of returning the appeal for representation to the Divisional Court, treated it as transferred from that Court to its own file. (Robertson and Chevis, JJ.)

Khota Ram *v.* Mauj Din.—12 P.L.R. 1912 Supp.; 276 P.W R. 1912; 16 I.C. 979,

—— S. 5—Sufficient Cause—Miscellaneous—Two decrees unnecessarily framed—Appellant believing in the existence of only one decree and filing one appeal only. (Shah Din and Scott Smith, JJ.)

Dhan Singh *v.* Kahn Singh.—191 P. W. R. 1912; 115 P. R. 1912; 6 P. L. R. 1912 Supp. 15 I. C. 140.

— *S. 5—Time required in taking copy of trial Court's Judgment.*

Delay due to the obtaining of copy of trial Court's judgment may be excused, if the appellant had not obtained the copy at the commencement of the period of limitation and had been compelled to obtain it towards the end of the period. (Broadway and Abdul Qadir, JJ.)

Gurdit Singh *v.* Charan Das.—1922 Lah. 415.

——*S. 6—Applicability—Assignee from minor if entitled to benefit of section.*

An assignee of property from a Mahomedan minor cannot avail himself of the benefit of the provisions of S. 6 of the Limitation Act of 1908. (Leslie Jones, J.)

Hukam Singh *v.* Shahab Din.—14 P.W.R. 1918; 44 I.C. 890.

— *S. 6—Applicability to son not born on date of alienation—Minority—Commencement of.*

S. 6 of the Limitation Act does not apply to non-existing persons, *i.e.*, to persons whose causes of action arise on their birth after the alienation. (Chevis, J.)

Kehar Singh *v.* Hazara Singh.—173 P.W.R. 1912; 14 I.C. 69.

— *S. 6 and Art. 164—Application to set aside ex-parte decree—Minority—General Clauses Act, S. 6.*

The period laid down in Art, 164 for an application to set aside an *ex parte* decree cannot be extended on the ground of minority under S. 6 of the new Lim. Act which is limited to applications for the execution of a decree. The application in this case dated 1st May 1914 was governed by the Lim. Act of 1908 and not by the Act of 1877, notwithstanding the provisions of S. 6 (c) of the General

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Clauses Act; 35 M. 678; 37 A. 597, *referred to*. 90 P. R. 1904, *distinguished*. (Shadi Lal and Le Rossignal, JJ.)

Manohar Lal *v. Mst.* Saliga Begam.—101 P. L. R. 1916; 37 I. C. 292.

— *S. 6—Plaintiff minor on date of mutation—Entitled to sue within three years of majority—Punjab Limitation (Ancestral Land Alienation) Act.*

Under the provisions of the Punjab Limitation (Ancestral and Alienation) Act of 1900 time begins to run from the date of mutation, when mutation has taken place, and where plaintiff in a suit governed by that Act was a minor when mutation took place, he can bring his suit within three years after attaining majority under S. 6 of the Limitation Act. (Rattigan and Beadon, JJ.)

Natha Singh *v.* Kishen Singh.—84 P. L. R. 1914; 47 P.W.R. 1914; 22 I, C. 637.

— *S. 6—Limitation—Onus of proving age to bring the suits within time.*

For the purposes of limitation it is for the plaintiff to establish affimatively and clearly that he was uuder the age of 21 at the date of institution of his suit, and where he fails to do this and has been able merely to show that he was possibly under that age at that time, it must be held that he has failed to discharge the burden of proving that his suit is within time. The Chief Court will be naturally reluctant to throw out a claim as barred by limitation when it is satisfied that the claim is a just or equitable one. (Kensington C. J and Rattigan, J.)

Kunwar Charanjit Singh *v.* Bishen Singh, 167 P. I. R. 1914; 78 P. W. R. 1914; 23 I. C. 462.

— S. 6—Scope—Applicability of, to suits to enforce a right of pre-emption. *See* Lim. Act, Ss. 5, 6, 7, 8 and 14.

86 P. R. 1919; 52 I. C. 587.

— *S. 6 and 8 Art. 12—Minority—Extension of period—Minority during confirmation of sale—Suit to set aside after majority.*

Section 6 of the Indian Limitation Act gives a minor the same period of limitation after his attaining majority as an ordinary person gets. There is nothing in section 8 to extend the period. A suit by a minor to set aside a sale under Article 12, Schedule I, of the Limitation Act, must be brought within one year from the date of the plaintiff's majority. (Chevis, J.)

Pala Singh *v.* Harnama.—40 P. L. R. 1918; 30 P. W. R. 1918; 43 I. C. 712.

— *S. 7—Cutom—Alienation by soulessporprietor—Right of after-born reversioner to object.*

Though a reversioner born after an alienation has been made is, under certain conditions, competent to contest its validity, yet he can only do so if the pariod of limitation had not expired before the date of his birth and his suit is brought within the period prescribed by law. He cannot, if born after the cause of action has

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already accrued and time begun to run, claim extension of time under Section 7 of the Limitation Act. (Rattigan and Lal Chand JJ.)

Umra *v.* Ghulam.—22 P. R. 1907; 27 P.L.R. 1908; 39 P.W.R. 1907.

— *S. 7 Sch. 12 Art. 166—Civil Procedure Code Act XIV of 1882, S. 311—Execution of decree—Sale—Application to set aside—Minority effect of—*

Held, that an application under section 311 of the Civil Procedure Code, 1882, to set aside an auction sale presented on behalf of a minor by his next friend or guardian after the expiry of one year from the date of sale is not barred under article 166 of the second Schedule of the Limitation Act, XV of 1876, Section 7 of the Act applies to such cases and the period of limitation is extended under the provisions of the section I. L. R., I. Cal, 226, XXIII Cal. 374 IX All. 411 *followed*. The operation of section 7 is not confined to applications made by minors after attaining majority but extends to applications made by guardians during the minority of their wards

Hald, also, that section 6 of Act IX of 1908 did not govern the application which was made before the Act had come into force—I. L. R. VIII Bom. 262, 263, I Cal. 243, XXIII Cal. 388, III C. W. N. 25 *referred to*. (Rattigan, J.)

Gujjar Mal *v.* Sita Ram.—5 P. L. R. 1910; 118 P. W. R. 1910; 6 I. C. 488.

— *Ss 7 and 8 Sch. 2, Art 179—Execution of decree—Limitation—Insanity of decree holder.*

Held, that the insanity of the decree-holder which began after passing of the decree did not save limitation which had commenced to run. The release of the judgment-debtor for failure to deposit subsistence money cannot serve as a starting point of limitation. (Chatterji, J.)

Aya Singh *v.* Gurdial.—72 P. L. R. 1906.

— *Ss. 7, 9 and 17—Minority of some of the representatives of the decree-holders—Instalment decree provision as to payment of whole decretal amount on default in payment of instalment—Waiver by decree-holder to enforce the provision.*

Sections 7, 9 and 17 of Limitation Act cannot be interpreted so as to extend the period of limitation for an application to execute a decree payable by instalments by the fact that on his death the decree-holder left heirs, some of whom were minors.

It is only where the wording of an instalment decree is that the decree *shall be executed* for the whole amount outstanding on default of an instalment, without option to the decree-holder, that limitation will run from the date of default. The decree should be construed, as for as possible, in favour of the judgment creditor, that is, as giving an option to him, wherever this can fairly be done.

In the present case the Chief Court held that the fair construction of the decree was that the decree-holder had the option

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given to him by the decree. (Reid, C J. and Kensington, J.)

Allah Bakhsh *v.* Bhawani.—100 P.R 1902; 131 P.L.R. 1902.

— *Ss. 7, 9 and Art. 120—Starting point of limitation—Declaratory suit by a childless proprietor's reversioner born subsequently to the alienation—Custom.*

Held, that an after-born son's right of suit is dependent upon the acts or omissions of the collaterals then in existence, and a member of the family born at a date subsequent to the alienation does not acquire a fresh right to sue at his birth. (Chitty and Lal Chand, JJ.)

Mohan Singh *v.* Deva Singh—21. P. W. R. 1907.

— *S. 9—Cause of action—Limitation—Adjustment of claim—Re-opening of—Fresh cause of action.*

Plaintiff realised the money due to him from the defendant on an award which had merged in a decree of court. Subsequently the award was set aside and the plaintiff directed to refund the money realised by him.

In a suit by plaintiff for recovery of the amount due. *Held*, that when the plaintiff's original claim was satisfied in execution, limitation ceased ruuning against him. On the annulment of that satisfaction a fresh cause of action arose and the suit was within time. 43 M. 845, *followed*. (Broadway and Abdul Qadir, JJ.)

Kartar Singh *v.* Bhagat Singh—2 Lah. 320; 64 I.C. 454.

— *S. 10—Applicability—Land assigned by mutual agreement—Suit for its recovery—Limitation.*

When land is assigned for a fixed term a suit for its recovery on expiry of the term is governed by section 10 of the limitation Act W. N. All. 1905, p. 89 *followed*. 78 P. R. 1875, 38 P. R. 1878, 141 P. R. 1883, 85 P. R. 1902, I. L. R. IV All. 137 *distinguished*. (Leslie Jones, J.)

Mst. Seoti *v.* Bhagirath.—66 P.R. 1918; 12 P. L. R. 1918; 70 P. W. R. 1918 : 45 I. C. 325.

— *S. 10—Applicability—Suit by co-sharer for mesne profits.*

S 10 of the Act does not apply to a suit by one co-sharer against others for mesne profits as it cannot be said that the defendant co-sharers in possession have been holding the profits "in trust for a specific purpose" within S. 10 of the Act. (Leslie Jones and Broodway, JJ.)

Shams-ul-Nissa *v.* Yakub Bakshs.—61 I. C. 393.

— *S. 10, Arts. 60 and 145—Applicability—Money kept in deposit with another to be returned on demand—Suit to recover—Limitation.*

The plaintiff sent some money from America to his father-in-law, to be repaid to him on demand and to be kept in deposit till then.

Held, that section 10 of Limitation Act was not applicable to the suit and that Article 60 and not 145, governed the claim.

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34 P.R. 1898, I.L.R. XXXVII Mad., 175 *followed*, XX C. W. N. 232, VI C. L. J. 535 *not followed*. (Rattigan, C. J.)

Dalipa *v.* Labhu Ram—4 P. R. 1919; 65 P. L. R 1918; 166 P. W. R 1918; 47 I. C. 592.

—*S. 10—If Controls art 134.*

S. 10 of the Lim. Act controls Art. 134 of the Act and gives the clue to its meaning. (Scott Smith, J.)

Diwan Singh *v.* Sham Das.—1922 Lah. 271; 65 I. C. 722.

—*S. 10, Art 120—Trust and Trustee—Suit by author of trust to recover trust property.*

Where, under an award, certain money was to remain deposited with defendant, in plaintiff's wife's name as owner without power of alienation, except with reference to interest which was payable to her, and after her death her issue were to be entitled to this money.

Held, (1) that (*a*) plaintiff's wife was only to have a life interest in the property, the revision being with the plaintiff, or (*b*) assuming her to have been constituted full owner, plaintiff was her heir under Hindu Law.

(2) That the "defendant was constituted the trustee plaintiff's wife to keep charge of the money, to pay the interest to her during life, and to hand it over on her death to any male issue she might leave," and "the plaintiff may be said to be the author of the trust, as he, acquiesced in and accepted the award of the abritrator in the matter." But when plaintiff's wife died trust came to an end and S. 10 ceased to be applicable."

(*b*) that S. 10 applies to express trusts alone, and excludes implied truts and those resulting from the operation of the law and that it does not apply to a suit to recover trust money in the hands of the trustee. on failure of the object of the trust for the plaintiff's own use and for the purpose of the trust.

(*c*) tbat the limitation to enforce resulting trusts is that provided bv art. 120 of the Limitation Act. (Chatterji and Johnstone, JJ.)

Gulzari Mal *v.* Kishen Chand.—132 P.R. 1907; 173 P W R. 1907.

—*S. 10 and 120—Pre-emption—Property transferred to pre-emptor having right inferior to plaintiff—Sale or substitution.*

The vendor sold one-half of his holding to *G.* on 5th September 1898 and the remaining half to *H.* on the 3rd October 1898. On 4th February 1899 *H.* transferred to *F.* rights purchase by him. On 31st January 1900, *G.* brought a suit against *F.* on the allegation that he had a preferable right to buy as against *H.* and *F.* It was pleaded by *F.* that the suit was barred by limitation. It appeared that both *F.* and *G.* had a right of pre emption against *H.*

Held, that article 10 and not 120 of the Limitation Act applied to the case and that the transfer by *H.* to *F.* must be treated not as a fresh sale but as substituting one vendee for another and the suit not having been brought within one year from the 3rd October

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1898 was barred by limitation. I. L. R. VII All. 167 and 11 P. R. 1893 *referred to*. (Robertson and Kensington, JJ)

Ghulam Jilani *v.* Hassan Khan—86 P. L. R. 1905.

——*S. 10 Arts. 134 and 144—Sale of immoveable property of a Religious Institution by its Mahant—Suit to recover it by his successor—Trustee.*

Held, by the Full Bench of three Judges, (1) in the Punjab a Mahant or other similar head of a Religious Institution is the trustee for the property under his control as Mahant, within the meaning of Art 134, Indian Limitation Act, XV of 1877; that (2) a suit to recover possession of such property alienated for value by a Mahant in excess of his powers and in voilation of the trust must be brought within twelve years of the date of alienation; and that (3) if such a suit is brought by the successor of the Mahant who made the alienation, limitation as against him, runs not from the date of his appointment but from the date of his alienation.

Held, also, that the said article is not restricted in its application to purchasers in good faith, but applied equally to an alienation from a trustee for value even if he takes the property with full knowledge that the alienor is acting in excess of his powers (*a*) (Clerk C J. Chatterji and Rattigan, J.)

Mahant Har Gean Dev *v.* Baldeo Das.—123 P.W.R. 1908; 127 P.R. 1908.

——*S. 10—Trust—Gurudwara—Property attached to—Ejectment of donee—Land granted to custodian as dharmarth, if trust property.*

In a suit by plffs. for ejectment of the donor and donee from two plots of land gifted by the former to the latter on the allegation that the land was attached to the Gurudwara of Shahidganj and the donor had no authority to alienate it, the first Court held that the first plot was attached to the gurudwara and that the gift of it was invalid, but that the other plot was gifted to the husband and was not attached to the gurudwara and therefore the plaintiff had no *locus standi* to contest the alienation.

Held that the suit could be brought only for the dispossession of the donee from the first plot and that S. 10 of the limitation Act was applicable to the suit 8 P. R 1899 9 P. R. 1904 and 124 P. R. 1912 *distinguished*.

As regards the second plot which was gifted as dharamarth, it was the private property of the donee and did not become property of the shrine of which he was the custodian and consequently plaintiff had so *locus standi* to sue in regard to this plot. 78 P. R. 1912. referred to. (Scott Smith, J.)

Jamit Singh *v. Mst.* Raji—109 P. R. 1919 ; 53 I. C. 577.

——*S. 12—Absence of decree—Copying time.*

The appellant may be entitled to exclusion of time from date of application to date of preparation of copy or even from date of judgement but is not entilted to exclusion of time

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between the date of preparation of copy and application for copy of decree, (Shadi Lal C. J. and Martineau, J.)

The Municipal Committee, Chiniot *v.* Pashi Ram.—1922 Lah. 170.

—— *S. 12—Appeal—Limitation—Computation—"Time requisite for obtaining copies"—Copies of decree and of judgment applied for separately—Applicant if entitled to separate deductions—Practice—Finding of lower appellate court on point—Binding nature of on second appellate court.*

Under section 12 of the Limitation Act an appellant can only deduct such time as was "requisite" for obtaining copies. What time is requisite for this purpose is a question of fact and where the Divisional Judge has decided that two allowances *viz.* one for obtaining the copy of Judgment and another for obtaining copy of the decree of the lower court were not requisite in the particular case and made only one allowance, whether he was right or wrong is not a question of law. (Chevis, J.)

Sher Singh *v.* Prem Raj.—185 P.W.R. 1918; 100 P.R. 1918; 48 I.C. 31.

—— *S. 12—Appeal—Limitation—Computation—Time requisite for obtaining copies of judgment—Delay in taking delivery of ready copy—Effect.*

The lower appellate Court dismissed the appeal as time barred holding that the appellant was not entitled to reckon out 3 days during which the copy of the original court's judgment lay undelivered and also the delay caused by the appellant's failure to make a deposit against the costs of the copy.

Held, that what has to be regarded is not the time actually spent in securing the copies but the time required for that purpose and therefore the delay of three days could not be excused, but the appellant could not be blamed for failure to put in a deposit with the application, for a deposit is not necessary in every case. (LeRossignol, J.)

Nur Muhammad *v.* Ram Das.—4 P.L.R. 1919; 50 I.C. 760.

—— *Ss. 12 and 5—Appeal—Limitation—Time spent in obtaining translation—If sufficient cause.*

Time spent in obtaining a translation of the judgment cannot be excluded under section 12 of the Act and it is not a sufficient cause under section 5 of the Act, to justify an extension of time. (Wilberforce, J.)

Kanhaya *v.* Nur Mohammed.—59 I.C. 965

—— *S. 12—Copies sent by post—Time for obtaining copies—Mode of computing.*

Where in accordance with the rules, copies are despatched by post, the period intervening between completion and despatch of the same is also excluded in computing the time for filing appeals. (Scott Smith, J.)

Ghulla Singh *v.* Sohan Singh.—3 Lah. 280; 1922 Lah. 219.

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——*S. 12—Limitation for application under section 70 (b) of (Act XVIII of 1884), as amended by (Act XXV of 1899)—Indian Limitation Act (XV of 1877), section 12—Deduction of.*

Held, (*i*) that the provisions of S. 12 of the Indian Limitation Act, 1877, are applicable in computing the period of 90 days prescribed in the first proviso to S. 70 (1) (b) of the Courts Act, as the explanation (2) to the section expressly provides, that in computing the period of limitation aforesaid, the provisions of the Limitation Act, shall be deemed to apply.

(*ii*) that, accordingly, in computing the aforesaid period of limitation, the time requiste for obtaining the copies of the judgment and decree of the lower appellate Court must be excluded, although such copies may not be required by law to be filed. (Rattigan and Lal Chand, JJ.)

Kirpa Ram *v.* *Mst.* Rakhi.—114 P.R. 1907;
72 P.W R. 1907;

——*S. 12—Land Acquisition Act 1 of 1894 S. 18 (2) (b)—Appeal against order of Divisional Judge confirming award made by collector and dismising claim as barred by limitation—Limitation Acts—Construction of.*

The principle, that statues of limitation being restrictive of ordinary legal rights should as for as possible be construed in favour of the right to proceed can be applied only in cases of doubt and of embiguity of language. Where the words of the statues are plain effect must be given to them no matter what the apparent hardship there may be.

The general provisions of the Limitation Act 1877 apply to proceedings held under Local or Special Laws. But it is necessary in every case to see whether such provisions are in terms applicable to the circumstances of any particular case.

An application made under section 18 of the Land Acquisition Act, 1894 does not come within the purview of section 12 of the Limitation Act. (Anderson and Rattigan, JJ.)

Bhagwan Das *v.* The Collector Lahore.—133 P. L. R. 1904;
79 P.R. 1904.

——*Ss. 12 (2) and 5—Punjab Courts Act, S. 14, rules under—Rule 4, (ii)—Copying agent—Statute of limitation—Application to copying Agent not proper application—Application for copy of judgment and decree made after expiry of period for apneal—Exclusion of time spent in obtaining copies—Gross Negligence—Extension of time of appeal.*

Judgment in a case was pronounced by the Divisional Judge, Delhi on 24th February 1901. The appellants did not apply for a copy of the judgment and decree themselves but came to Lahore and engaged a counsel to file an appeal on their behalf. On 16th May the counsel sent a letter to the Copying Agent, Delhi District asking him to supply the requisite copies. But no copying fee, having been remitted with the letter, the Copying Agent wrote back saying that he could not file an application for the copies asked for unless the necessary money was sent to him.

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On this Rs, 4 were remitted to him by money order on 21st May. On receipt of this money on 23rd May, he applied for the copies on 25th *idem* obtained them on the same date and forwarded them to the appellant's counsel, who filed a memorandum of appeal on the 29th May.

Held, (1) that the appeal was filed out of time; (2) that the Copying Agent was not an officer of the Court to whom application for copies could be properly made under Rule 4 (*ii*) of the Chief Court Rules made under section 14 of the Punjab Courts Act, that he could not be regarded as of a higher status than a private agent of the appellant and that, therefore, an application to him could not be treated as a proper application; (3) that the proper application for copies was made for the first time on the 25th May that is one day after the period of limitation prerscibed by law for the appeal to the Chief Court had expired, and that therefore, no deduction could be allowed under section 12 of the Limitation Act for the period spent in obtaining copies after the 25th May; (4) that the appellants were guilty of gross negligence and were not entitled to an extension under section 5 of the Limitation Act. (Johnstone and Shah Din, JJ.)

Ashiq Hussain *v.* Ali Bakhsh—61 P. L. R. 1911; 189 P. W. R. 1911; 9 I. C. 881.

——*S. 12 (3)—Second appeal—Time for obtaining copies of first Courts judgment—If excluded.*

S. 12 (3) of the Lim. Act allows to be excluded only the time requisite for obtaining a copy of the judgment against which the appeal is preferred. Even where the rules of the court require the filing of the judgment of the Court of first instance in a second appeal, the time requisite for obtaining it does not fall under S. 12.—(Abdul Raoof, J.)

Madan Gopal *v.* Malawa Ram.—68 I. C. 777.

——*S. 12—Time for despatch.*

From the day when copy is ready, to the day when it is despatched, the time is excluded. (Broadway and Abdul Qadir, JJ.)

Gurdit Singh *v.* Charan Das.—1922 Lah. 415.

—*S 12.—Time requisite for obtaining copies—Computation of.*

In computing the time taken for obtaining copies under S. 12 of the Lim. Act the time spent between the date of decree and the date of application for copies cannot be deducted. The question as to the time requisite for obtaining copies is one of fact. (Martineau, J.)

Bawa Singh *v.* Thakur Singh—1922 Lah. 423; 67 I. C. 478.

——*S. 12 (2) (3)—Time spent in obtaining vernacular copy of decree, when decree was drawn in English—No right to deduct.*

Where the decree of First Court was drawn in English, but the appellant obtained a vernacular copy of the decree and filed it along with the memo of appeal in the Lower Appellate Court.

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Held, that the time spent in obtaining the vernacular copy could not be excluded in computing the period of limitation for the presentation of the appeal in as much, as the practice of the Lower Appellate Court required an English copy of the decree to be filed with the memorandum. (Shadi Lal and Le Rossignol, JJ.)

Mahomed Amin *v.* Chiragh Beg.—124 P.L.R. 1917; 64 P.W.R. 1917; 39 I.C. 617.

——*S. 12 (2) and (3)—Copies of judgment and decree—Time spent in obtaining—Deduction of—Mode of calculation.*

Held, (1) That there is nothing in the law that obliges an appellant to make one and the same application for obtaining copies of the judgment and of the decree. Accordingly. (2) That where the original application was for copies both of the judgment and of the decree, but this was subsequently amended and a copy of the judgment was alone asked for, and only one was supplied, and the period for pleading had not expired when the application for a copy of the decree was put in, that the appellant was entitled to a deduction of time requisite for obtaining both the copy of the judgment and the decree and the appeal was within time. (Scott Smith and Martineau, JJ.)

Ali Muhammad *v.* Nathu.—163 P.R. 1919; 54 I.C. 879.

—— S. 14—Appeal—Presentation to wrong Court—Carelessness—No excuse—Minority of Appellant—Effect of. *See* Lim. Act S. 5.

205 P. W. R. 1912; 15 I. C. 170.

—— *S. 14.—Applicability—Civil proceedings.*

Under order 7, rule 6, Civil Procedure Code, the plaintiffs are bound to show in the plaint the ground on which exemption from the law of limitation is claimed and they cannot be allowed to rely upon a ground upon which the plaint is wholly silent. (Shah Din and Beadon, JJ.)

Gobinda Mal *v.* Santa.—232 P.L.R. 1915; 83 P. R. 1914; 26 I. C. 441.

—— *Ss. 14 and 19 Art. 179 (4) of 2 sch.—Decree debt acknowledgment of—New period of limitation—Time occupied in a civil proceeding prosecuted with due diligence and* bona fide—*Exclusion of, in computing period of limitation.*

P. B. Co., obtain a decree on 1st March, 1900, against a personally and against the immoveable property known as M. T. Estate. R and Co. had obtained another decree against A in March, 1893, and in execution of their decree attached the M. T. Estate, and an order was passed for the sale of that estate to take place on 20 April, 1901. On 23rd March, 1901, A wrote a letter to P. B. Co., in which A acknowledge his indebtedness to P. B. Co., and requested them to take steps to have the sale stayed, and similar letters were written by A to P. B. Co, on 21st February, 1902, and 5th October, 1903. P. B. Co., also applied to the Court, by means of applications dated 4th April, 1901, 21st January 1902, and 2nd October 1903, and 8th October 1903, to have their debt paid out o

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the sale of the attached property as a first charge upon the said property. P. B. Co.'s debt was paid out to them as first charge after sale of the said property, but the sale having been cancelled subsequently. P. B. Co., had to refund the money under the direction of Court, on 11th August 1905. After all these proceedings, P. B. Co., applied for execution of their decree on 23rd November, 1905.

It was contended that this application was time-barred.

Held, that the letters, dated 23rd March, 1901, and 5th October 1903, contained express admissions of A's indebtedness and amounted to acknowledgments of liability within the meanings of S. 19 of the limitation Act, 1877, and that the present application, dated 23rd November, 1905, was amply within time (*a*).

Held, also that it was perfectly clear that the P. B. Co., in good faith, made no less than four applications, with a view to obtain satisfection of their decree, which is precisely the relief sought in the present application, and that, therefore, in computing the period of limitation for the present application, the decree-holders (P. B. Co.,) are entitled, under S. 14 of the limitation Act, 1877, to exclude the period between 4th April, 1901, and 11th August, 1905, the date on which they refunded the amount which they had received out of the sale of the attached property.

Quære:—Whether the applications made by the decree-holders on 4th April, 1901, and 21st January, 1902, were applications to the executing Court "to take a step-in-aid of execution" within the meaning of Art. 179, cl. 4, of Schedule 2 of the Limitation Act, 1877. (Robertson and Shah Din, JJ.)

Peachey *v.* Punjab Banking Co., Ltd., Lahore.—52 P. R. 1909; 78 P. W. R. 1909; 2 I. C. 102.

——*S. 14—"Defect of jurisdiction"—"Unable to entertain" and not unable to decide—Misjoinder of parties or causes of action, not covered by the section.*

Held, that the words in section 14 of the Indian Limitation Act, Act XV of 1877 (now Act IX of 1908) "is prosecuted in good faith in a Court which from a defect of jurisdiction or other cause of a like nature is unable to entertain a suit," cannot be extended to cases in which a court is competent to entertain a suit but is unable to pass a decree by reason of a defect in the form of the suit such as misjoinder of the parties or causes of action &c. 34 P. R. 1898; I. L. R. 28 Mad. 338; I. L. R. 35 Cal. 728; *followed*. (Reid, C.J.)

Allan Khan *v.* Dost Muhammad Khan.—8 P. R. 1911; 78 P.L.R. 1911; 78 P.W.R. 1911; 9 I C. 680.

——*S. 14—"Defect of jurisdiction" meaning of—Appeal—Pre-emption—Suit, valuation of suit.*

The words "defect of jurisdiction in section 14 of the Limitation Act, mean a defect of jurisdiction peculiar to the Court in which the proceedings were taken and do not cover such mistakes as the presentations and prosecution of an appeal which did not lie in

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any Court. 63 P. R. 1896; 45 P. R 1893; 34 P. R. 1898, *followed in principles.*

In a pre-emption suit the plaintiff was directed to doposit a certain sum in advance, and on his failing to appear and to do so by the date fixed, his suit was dismissed. He appealed against this dismissal but his appeal was rejected as incompetent. He then applied for the restoration of his case, and his application was dismissed as time-barred. He preferred an appeal against this dismissal which proved successful on the ground that he was entitled to a deduction of the time he had spent in the prosecution of his appeal against the dismissal of his suit. On further appeal to the Chief Court, it was urged, *inter alia*, that the plaintiff could not have the benefit of section 14 of the Limitation Act. (Johnstone, J.)

Moti Singh *v.* Maghar.—244 P.L.R. 1911; 163 P.W.R. 1911; 22 P.R. 1912; 11 I.C. 880.

——S. 14—Exclusion of time during which previous proceeding was pending—What should be proved—Diligence and defect of jurisdiction. *See* Limitation Act, S. 19 Etc.

33 P.W.R. 1916; 41 P.R. 1916; 32 I.C. 497.

——*S. 14—One suit for pre-emption of several properties sold on different dates to separate vendees—Plaint restricted to one—Subsequent suits after time.*

Where several properties have been sold to different vendees dates and the pre-emptor in good faith sues all the vendees jointly in different and the suit is restricted to only one of the sales:

Held, that section 14 of the Indian Limitation Act. IX of 1908, shall apply in computing the period of limitation for the suits subsequently instituted in respect of the sales of the rest property. (Shah Din, J.)

Ahmad *v.* Sultan.—87 P.L. R. 1915; 26 P.W.R. 1915, 27 I.C. 927.

——S. 14—Return of plaint for want of jurisdiction—Presentation to another court—Delay. *See* Limitation Act, S. 5.

18 P.W.R. 1916; 33 I.C 808.

——*S. 14—Suit filed out of time—Plaint to shew ground of exemption—Revenue proceedings, whether within section—Civil Procedure Code, O. 7, R. 6.*

Where a suit is filed out of time, the plaint must show, under O. 7, R. 6 of Civil Procedure Code, the ground of exemption from limitation. An alleged acknowledgment not mentioned in the plaint cannot be allowed to be relied upon, 31 C. 195; 10 Bom. L. R. 316, *referred to.*

Proceedings in Revision Court do not come within the purview of S. 14 of the Limitation Act. (Shah Din, and Beadon, JJ.)

Gobinda Mal *v.* Santa.—83 P.R. 1914; 232 P.L.R. 1915. 26 I.C. 441;

—— *S. 14—Time spent in prosecuting suit in another Court—Good faith—Due diligence.*

On the 25th October 1912 the plaintiff lodged his suit in the Munsiff's Court claiming a sum of money over Rs. 500. On 22nd

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July 1913 he learnt that the amount due to the insolvent firm, whose assets he had purchased, was less than Rs 500 and amended plaint was filed on 30th July 1913 in the Munsiff's Court, the claim having been reduced to Rs 438-9-6. On 7th August 1913 the plaint was returned to be filed in the proper Court and on 11th August 1913 the plaint was filed in the Court of Small Causes.

Held, that the plaintiff acted in good faith and with due diligence upto 22nd July 1913 but after that date he did not and failed to satisfy the requirements of section 14 of the Limitation Act. (Shadi Lal, J.)

Seth Radha Kishen *v.* The Firm of Ladha Mal Ram Chand.—51 P.L.R. 1915; 54 P.W.R. 1915; 28 I. C. 347.

——*S. 14 Arts. 89 and 120—Suit for accounts and share of profits—Demand and refusal—Limitation—Commencement of period—Good faith—Agreement for payment of profits at certain place alleged but not proved—Plaint returned for presentation to proper court—Exclusion of time taken up in first court—Civil Procedure Code (Act XIV of 1882) S. 20—Application for stay of proceedings—Rejection, effect of.*

Plaintiffs, residing at Khurja whithin the Aligarh Judgeship, owned a share in a partnership business managed at Hansi by defendants. On 31st March, 1904, plaintiffs brought a suit against the defendants in the Court of the Subordinate Judge, Aligarh, for the recovery of a sum of money on account of their share of the profits of the business alleged to have accrued during the years 1959 and 1967, *Sambat*. One of the allegations in the plaint was that there was an agreement entered into between the parties at Khurja, by which plaintiffs' share of the profits was to be paid to them at Khurja, and that accordingly plaintiffs had been receiving their share at Khurja. Defendants applied to the Subordinate Judge, Aligarh, for stay of proceedings in the suit under S. 20, Civil Procedure Code, of 1882. That application was rejected and no appeal was preferred against the order of rejection. The only evidence in support of the alleged agreement to pay the profits at Khurja consisted of the statement of one of the plaintiffs. The Subordinate Judge held that the agreement was not proved, but he held that the defendants were debarred from saying that the suit was not cognizable by his Court; as the order rejecting their application for stay of proceedings had not been appealed against. On appeal to the High Court, Allahabad, it was held that the agreement was not proved and consequently the Subordinate Judge had no jurisdiction to entertain the suit. The plaint was returned on 9th January 1908, for presentation to the proper Court, and, on 17th January, 1908, it was presented to the Court of the District Judge, Hissar. Defendants resided and carried on business within the Hissar District

On 1st August, 1904, defendants had stated in their written statement filed in Aligarh Court that the accounts for the years 1959 and 1960, *Sambat*, had already been rendered and that only Rs. 53-0-6 was due to the plaintiffs, which some defendants were ready to pay to the plaintiffs.

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Held, (1) that the suit in Aligarh Court was not brought and prosecuted *in good faith* within the meaning of S. 14 of the Limitation Act, 1877, and that, consequently, the time during which the suit was pending in the Aligarh Court and in the Allahabad High Court could not be excluded from the period of limitation prescribed for the present suit by Art 89 of the Act;

(2) that, for the purposes of the present suit, the account demanded by the plaintiffs was expressly refused by the defendants on the 1st August 1904, and that the period of limitation under Art. 89 commenced from that date (*a*);

(3) that the suit as brought in the Court of District Judge, Hissar, was time barred (Robertson and ShahDin, JJ.)

Sham Lal *v.* Bainka Mal.—208 P. W. R. 1912; 14 I. C. 19.

——*S. 14 and Art. 178—Application to file award—Time spent in previous suit in which applicant as defendant set up award in bar of suit—No right to deduct.*

On an application to file an award beyond the period of time prescribed by art. 178 of the Limitation Act, *Held*, that the applicant could not be allowed to deduct the time spent by him as defendant setting up the award in bar of a prior suit instituted by the plaintiff. 41 P. R. 1914; 1 W. R. 29; (2), 9 W. R. 455 and I. L. R. 35 Cal. 209, 38 All. 85, *referred to*. W. R. 310 and I. L. R. 35 Cal. 209, *distinguished*. (Scott Smith, J.)

Nazim Khan *v* Alam Khan —89 P. R. 1919; 52 I.C. 581.

——S. 14 (2)—Exclusion of time in prosecuting application in wrong Court—Section not applied to Punjab Alienation of Land Act *See* Punjab Alienation of Land Act S. 21 (*a*)

158 P.W.R. 1911; 200 P.L.R. 1911; 11 I.C.

——*S. 15—Execution of decree—Limitation—Injunction restraining execution—Suspension of execution by Insolvency Court—Effect—Revival of execution—Limitation Act art. 182—Firm—Execution against if execution against all members.*

Where on an application of 30—8—1912 for execution of a decree against the firm B and J an order dated 1—10—1912 striking the case off the list or consigning the papers to the record room was passed on the ground that the firm had been adjudicated an insolvent and the decretal amount had been entered in the schedule of debts and on 3—4—1916 it was decided on the insolvency proceedings that B alone was the proprietor of the firm B. J and that there was nothing to prevent the decreer-holders from proceeding against J and thereafter on 19—4—1917 they made an application for execution against J.

Held, that the application for execution dated 19—4—1919 was not barred by limitation under art. 82 inasmuch as.

(1) the application of 13—8—1912 was to be considered against all the persons who were mentioned in the decree as members of the firm.

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(2) the application 1-10-1912 did not decide any matter which could operate as *res-judicata* ; and

(3) that the application of 19-4-1917 was not an application to initiate new proceedings which were suspended by the said order of 1st October.

Even if the application dated 19-4-1917 be regarded as a new application the order of 1-10-1912 amounts to an injunction within the meaning of S. 15 of the Lim. Act. The period from 1-10-1912 to 3-4-1916, is therefore to be excluded, 55 P. L. R 1912 *distinguished.* (Shadi Lal, J).

Firm of Tara Chand *v.* Jugal Kishore.—17 P. W. R. 1913; 51 I. C. 64.

— *Ss. 15, 19, 20, Sch. 1, Arts. 181, 182—Execution of decree—Start-point of Limitation—Pendency of insolvency petition—Execution—proceedings not stayed—Acknowledgement—Part payment of principal—Unsigned deposition—Step-in-aid of execution—Withdrawal of money deposited in Court.*

A obtained a decree against B on 21st My 1900, and on 16th October 1900 A applied for execution. On 23rd July 1901, A applied for attachment and sale of B's property and also for B's arrest, and on 26th August, 1901, the Court directed the sale. On 1st February. 1903, B applied to be declared an insolvent, filed a list of creditors in which A's name was also entered. On 27th July 1904, B informed the Insolvency Court that he had come to terms with his creditors, and filed the terms of the agreement arrived at by A with his creditors. The creditors accepted this settlement, consequently A's application dated 16th October, 1900, was consigned to the record room on 31st August 1904. On 20th November, 1905, B put in first instalment into the Court for the benefit of his creditors, and this money being short, he was ordered to put more to make up the deficiency which order he complied with on the 8th December, 1905. On 12th February, 1906. A withdrew his share. B not having done anything in furtherance of his settlement. A again applied on 10th July 1908 which was dismissed in default On 7th July, 1909, A again applied for execution which was also dismissed. A again applied on 18th July, 1909, for execution, which was met by objection by B that it was time barred. The question was whether the withdrawing of money on 12th February, 1906. would be a step-in-aid of execution of the decree or whether the limitation is to be reckoned from the 16th October, 1900, etc.

Held, that before the time prescribed for execution of a decree expires, acknowledgement of liability to pay the decree signed by the judgment-debtor, or voluntary payment made by the judgment-debtor or his duly authorised agent in this behalf towards part-payment of the decree, if such payment is signed by the judgment-debtor or his authorised agent, gives a new starting point of limitation.

But a payment made by order of the Court is not voluntary.

Held, also, that simply withdrawing money deposited by the judgment-debtor in the Court for the benifit of the decree-holders is

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not a step-in-aid of execution within cl. (5) of Art. 182 (*a*).

In the case of a compromise between the decree-holder and judgment-debtor to pay the decree by certain instalments, the right to execute the decree accrues when the first default occurs.

Held, further, that an order consigning the application for execution to the record room, puts an ends to the proceedings as regards that application, and an application made to execute the decree after that is to be considered a fresh application. (Rattigan, J.)

Ram Das *v.* Kanshi Ram—155 P. L. R. 1912 80 P. W. R. 1912; 14 I. C. 335.

——*S. 15 (2)—C. P. Code, S. 80—Time spent in giving prescribed notice—Deduction of.*

Where a plff. is required to give notice under S. 80 of the C. P. Code he is entitled under S. 15 (2) of the Lim. Act to exclude the period of notice (*i. e.*) two months, in computing the period of limitation prescribed for the suit. (Johnstone, C. J. and Shah Din, J.)

North Western Railway Co. *v.* Ram Dhan.—52 P. R. 1917; 42 P. W. R. 1917; 38 I. C. 600.

——*S. 18 Arts. 161 and 181—Applicability—Application to set aside sale by Insolvency Court for fraud—Limitation—Inherent power of Courts.*

Held, that an application either of the Insolvent or his creditor for cancelling, on the ground of fraud, a sale of immoveable property of the insolvent conducted by the insolvency Court in realizing assets of the insolvent under sections 20 and 23 of Act III of 1907 is governed by Article 181 and not by Article 166 of the 1st Schedule to Act IX of 1908.

Held, also that section 18 of the Act is general and under its force the time for making such an application begins to run only when the fraud becomes first known to the applicant.

Held, further that the Court has inherent power to entertain such an application. (Scott Smith, J.)

Afzal Ali *v.* Aman Ali.—107 P. L. R. 1914; 36 P. W. R 1914; 23 I. C. 397.

——*S. 18—Construction—"Against any person"*

The sale of certain landed property was ostensibly effected in favour of one B., but the real purchaser was one *M.* who actively concealed the fact of the sale in his own favour:

Held, in a pre-emption suit against *M.* that section 18 of the Limitation Act extended the period of limitation by making it run from the date of the pre-emptor's knowledge of the fraud:

Held, further, that as the suit was against *M.*, who was guilty of the fraud, it was quite immaterial that a possibly infructuous suit against *B.*, the ostensible purchaser, might have been instituted before the fraud became known to the pre-emptor.

The literal reading of section 18 of the Limitation Act is not against the view that the words against any person" should be

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understood to follow the words "a suit" in the beginning of the section (Reid, C. J.)

Ismail *v.* *Musammat* Boji—89 P. R. 911; 156 P. L. R. 1911; 186 P. W. R. 1911; 10 I. C. 114.

——*S. 18—Fraud—Averment—Omission to aver.*

If the facts as stated in a plaint necessarily suggest fraud on the part of a defendant, the mere omission there in expressly to stigmatise defendant's conduct as fraudulent would be no bar to plaintiffs relying on the provisions of S. 18 of the Limitation Act and in such a case, the Court should return the plaint to plaintiff for amendment. The mere omission on the part of a defendant to give plaintiff notice of a breach of a contract cannot by itself be construed as an act of fraud on the part of the defendants within the meaning of S. 18, Limitation Act. (Reid, C. J. and Rattigan, J.)

Rai Bahadur Har Dhian Singh *v.* The Delhi Cloth and General Mills Co., Ltd.—32 P. R. 1913; 16 I. C. 804; 265 P. W. R. 1912; 259 P. L. R. 1912.

——*S. 18—Fraud—Nature of.*

Section 18 of the Limitation Act does not apply where there is an absence of indication of any active or intentional concealment,

Mere omission on the part of a vendor to give notice of sale to a pre-emptor does not amount to fraud within the meaning of section 18. It must be shown not merely that the sale was not proclaimed but that it was fraudulently concealed.

There is no law requiring two attesting witnesses to a sale-deed, nor is it usual to register deeds of which registration is not compulsoy. Therefore, the mere fact that a sale-deed had only one attesting witness or that a deed not compulsorily registrable was not registered does not imply concealment within the meaning of section 18. (Rattigan and Chevis, JJ.)

Kaka Rom *v.* Muhammad Ali.—130 P.W.R. 1911; 209 P.L.R. 1911; 11 I.C. 313.

——*S. 18—Extension of time—Fraud—Elements of.*

Held, that no appeal is competent from the order of an appellate Court remanding for fresh decision a case on appeal against an order setting aside or refusing to set aside a sale in execution of a decree because there is no second appeal from the final decision of such Court as is laid down by section 104 (2) of the Code of Civil Procedure. (Chevis, J.)

Asa Nand *v.* Jhangi Ram.—2 P.W.R. 1919; 29 P L.R. 1919; 50 I.C. 610.

——*S. 18—Pre-emption suit—Fradulent concealment of plaintiff's right to sue—Burden of proof.*

In a case of pre-emption where the real nature of the sale transaction was fraudulently concealed by representing it to be an exchange, *held* that "when the origiral transaction is tainted by fraud, it lies on the fraudulent party to prove that the want of knowledge was *not* caused by fraud" or that the plaintiff "had

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clear and definite knowledge of those facts which constitute the fraud, at a time which is too remote to allow him to institute the suit. (Robertson, J.)

Gordhan Das *v.* Ahmad and others—34 P. R. 1904.

—— *Ss. 19 and 14—Acknowledgment—Construction—Recital of past events, whether acknowledgment—Exclusion of time—Proof, necessary.*

Held, that recitals of past events cannot be construed as acknowledgments of existing liability. Where, therefore, in a previous suit between the parties, the defendants in their written statements merely recited that they had received a certain amount as earnest money and then said that the said amount had been more than repaid by delivery of goods :

Held, that there was no such acknowledgment of liability on the part of the defendants as to extend the time under section 19 of the Limitation Act I. L. R. 20 Mad. 239; 21 Ind. Cas. 30; 1913 M. W. N. 682 ; 25 M. L. J. 259 at p. 261 ; I. L. R. 18 All. 384; at p. 385; 101 A. W. N. 1896, *followed*.

A person who claims an exclusion of time during which a former proceeding was pending must prove two things, *first*, that he had prosecuted the former proceeding with due diligence and, secondly, that the former Court had been unable to entertain it from defect of jurisdiction or other cause of a like nature.

Where, therefore, each of the two plaintiffs in a suit came into Court originally to sue separately in respect of a contract which gave them a joint but not a several right and their error wos pointed out to them and they were given every opportunity of rectifying it, but they elected to proceed with their suits as then framed, and by the time they were dismissed on the the ground of non-joinder the period of limitation had expired.

Held, that the plaintiffs had not exhibited that degree of diligence which alone could entitle them to the benefit of section 14 of the Act. 19 P. R. 1888, *followed*. (Rattigan and Shadi Lal, JJ.)

Kalu *v.* Mahru Mal.—41 P.R. 1916; 33 P.W.R. 1916; 32 I.C. 497.

—— S. 19—Acknowledgment—Construction not effective as basis of suit for money in the absence of a contract to pay.

154 P.W.R. 1915; 76 P.R. 1915; 31 I.C. 209.

—— *S. 19—Acknowledgment—Construction—Accounts—Balance struck by debtor—Promise to pay interest—Contract Act (IX of 1872) S. 25 (3) Acknowledgment—Novation.*

Held, that a balance struck by a debtor in the creditor's book with a statement of future interest to be paid (*e.g*, *Lene baki raha lena biaj* 1-4-0) is a promise, in writing to pay within the meaning of section 25 (3) of Act IX of 1872 and is enforceable regardless of all questions of limitation in connection with previous items or balances. 35 P. R., 1903, *followed*. 72 P. R. 1899) ; I. L. R. XXV Bom. 378, *referred to*. 119 P. R. 1908; 206 P. W. R. 1908. *disapproved and distinguished*. *Held*, also, that a balance struck by one of the joint Hindu brothers of their joint debt which originally

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began against their father is also binding upon the other brothers. (Reid, C J. and Johnstone, J.)

Tirkha *v.* Rizak Ram.—8. P. L. R. 1911; 138 P. W. R. 1910; 8 I. C. 811

——*S. 19—Acknowledgment—Construction–Deposition when an acknowledgment—Application signed by mortgagor's widow.*

A deposition, containing an admission, may amount to an acknowledgment within the meaning and for the purposes of section 19 of the Limitation Act provided it is duly signed by the deponent. 1 Mad. 220; 20 Mad. 239, *referred to.*

An application signed by the widow of a deceased mortgagor distinctly admitting the mortgage constitutes an acknowledgment sufficient to save limitation. (Rattigan, J.)

Allah Ditta *v.* Karam Chand.—151 P L.R. 1911; 194 P.W R. 1911; 10 I.C. 142.

— *S. 19—Acknowledgment—Construction of liability—Implied acknowledgment—What amounts to.*

Plaintiff sued for money due on two bonds dated 2nd November 1908 and 23rd July 1914, respectively. The bond of 1914 made mention of there being a separate bond for Rs. 430-15-0 *i. e.*, the bond of the 2nd November 1908.)

Held, that an acknowledgment of liability need not be express but may be implied, and that the mention in the second bond of the 1908 bond was by implication a sufficient acknowledgment of liability to bring the claim on the latter bond within the time. 9 Bom. L R. 715 (718) and I.L.R. 33 Cal. 1047 (1057) (P.C.) *referred to.* (Martineau, J.)

Arur Singh *v.* Partab Singh.—131 P. R 1919; 53 I. C 425

——*S. 19–Acknowledgment–Construction–Suit for balance of account and damages.*

In this case the plaintiff relied on an acknowledgment of the defendants to bring his suit within limitation. This acknowledgment was contained in a *Jawab-i-Dawa*, in a previous suit and was to the following effect: "Paragraph No. 2 of the plaint is to this extent correct that we with other partners entered into a contract on the 23rd September 1900 to supply 4,000 maunds of cation and in this connection a *Satta* was executed and on account of this contract the defendants have been supplying cotton to the plaintiff and have been taking money from time to time. The accounts have not yet been settled with the plaintiff".

Held, that where the existence of an account is admitted the inevitable deduction must be that the person making such an admission acknowledges his liability to pay his debt, if ary debt is found against him. 33 C. 1047 P. C.; 25 C. 844 at p. 851; 3 I. C. 19; 43 P. R. 1910; 35 B 302, relied on. 12 I. C. 378; 36 M. 68; 32 I. C. 497; 155 P. L. R. 1906, *referred to.*

Held, consequently, that the admission relied on in this case amounts to an acknowledgment of liability to pay and that the bar of limitation is saved thereby. (Shadi Lal and Wilberforce, JJ.)

Ganga Sahai *v* Khazan Chand—2 Lah. L J. 107; 1 Lah. 357; 58 I. C. 787.

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—— *S. 19—Acknowledgment—Mortgage—Redemption—Settlement officer recording that the mortgage was admitted by parties does not act as agent of parties.*

Held, by the Full Bench, that entries made by a Settlement Officer in the Settlement Records against mortgaged holdings to the effect that the proprietors and mortgagees verified the correctness of the record of mortgages do not operate as acknowledgments within the meaning of section 19 of the Limitation Act when they are not signed by the parties against whom they are sought to be used as acknowledgments. The Settlement Officer cannot be held to have signed the entries as agent of the parties duly authorised to sign for them. (Clark, C.J. Chatterjee and Robertson, JJ.)

Bahadur *v.* Nanka Ram.—53 P.R. 1905; 75 P.L.R. 1905.

— *S. 19—Acknowledgment—Settlement Record—Mortgage, Admission of, signed by one of mortgagees and Settlement Officer.*

The plaintiffs sued for redemption of a mortgage and contended that a fresh period of limitation for the suit for redemption began to run under section 19 of the Limitation Act from 1878, in which year the mortgage has entered in the *misl landobast* where the signature of one of the two mortgagees appeared at the end of the *Muntakhib khewat* papers, in which the entry of mortgage occured. The entry itself was not signed.

Held, that the contention was not valid and there was no acknowledgment within the meaning of Section 19 of the Limitation Act, for the Settlement Officer could not be regarded as agent duly authorised by the two mortgagees to make the entry of the mortgage in the *muntakhib khewat* and signature (among a mass of other signatures) of one mortgagee at the end of that document could not be properly referred to the mortgage entry, for the mortgagees were shown also as proprietors of other holdings in the village. (Johnstone, J.)

Ganga Ram *v.* Pokhar Das.—179 P.L.R. 1910; 123 P.W.R. 1910; 6 I.C. 491.

— *S. 19—Acknowledgment—Suit for possession of land mortgaged—Acknowledgment contained in bonds—Part of consideration entered being interest due on mortgage.*

Plaintiffs sued for possession on certain land which had been mortgaged to them and claimed an extended period by reason of the existence of certain aknowledgments by the mortgagor. This extension was claimed on the basis of acknowledgments contained, in bonds, dated 1899 and 1903 executed by the mortgagor in the plaintiff's favour. In these bonds part of the consideration was entered as being the interest due to the plaintiffs on the mortgage in the suit.

Held, that the admission of liability to pay interest under the mortgage cantained in the bonds of 1899 and 1903 amounts to an acknowledgment of liability under the mortgage including liability

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to give possession to the mortgagee 25 Cal. 844; 51 I. C. 985, *followed.* (Leslie Jones and Dundas, JJ.)

Anand Ram *v.* Inyat Ali Khan —2 Lah. L. J. 549; 68 I.C. 188.

——*S. 19—Acknowledgment by Agent—Principal and agent—Agent authorised to receive goods for his principal—Implied authority to make acknowledgment.*

Held, that an agent who has authority to receive goods for his principal has implied authority to sign an acknowledgment of balance due by the principle though the correctness of the amount charged is not admitted and the acknowledgment is conditional and subject to the principal's approval.

The principal is liable and may be sued for the price of goods supplied to the agent on the letter of the principal for goods to be delivered to his agent. (Rattigan and Shah Din, JJ.)

The Firm of Sheru Mal Chaina Mal *v.* Mr. F. Von Goldstein.—55 P. R. 1910; 136 P. L. R. 1 10; 6 I. C. 948.

——*S. 19—Acknowledgment by minor.*

An acknowledgment of liability by a minor is not efficacious within the meaning of Section 19 of the limitation Act—8 Bom., 99, 16 Mad., 227; 9 P. R, 1897: 4 M. & W. 653, *referred to.* (Chatterji and Maude, JJ.)

Anisul Rehman Khan *v.* Beni Ram, 59 P. R. 1901.

——*S. 19—Acknowledgment of debt—Promise to pay—English and Indian Law.*

In English law it is quite clear that an acknowledgement of debt has always been understood to connote and imply a promise to pay, but in India a mere acknowledgment of debt has never been *held* to justify the implication of a promise to pay. (Le Rossignol and Martineau, JJ.)

Nand Lal *v.* Partap Singh.—1922 Lah. 425; 3 Lah 326.

——*Ss. 19 and 20—Acknowledgment of liability—Joint mortgagors.*

Under the Lim. Acts of 1871 and 1877 an acknowledgment of the right of redemption must be made by all the mortgagees and if not so made, it did not save limitation even against the shares of those who signed it, if the mortgage was indivisible. (Martineau, J.)

Nadar Shah *v.* Ishar Das.—67 I. C. 463.

——*Ss. 19 and 21—Deriving title—Acknowledgment—Lawful guardian—Mother—Mahomedan Law—Manager.*

Held, that a mother is not, under the Muhammadan Law a guardian of the property of her minor son, and she cannot, therefore sign an acknowledgment on behalf of her minor son so as to give a new *cermiuns a quo* for the period of Limitation for the suit against the latter.

Held, also that even an uncle does not find a place in the of guardians of property under the Mahommedan Law. (Shadi Lal, J.)

Chanan Shah *v.* The Firm of Wodhu Ram Jiwan Mal.—61 P.L.R. 1917; 143 P. W. R. 1917; 42 I.C 17.

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——*S. 19—Acknowledgment, form of—Essentials—Writing—Oral acknowledgment.*

An oral acknowledgment of a debt is outside the scope of S. 19 of the Limitation Act. Where, therefore, a person promised orally to pay a certain debt due by him on a certain date, it was held that the provisions of section 19 of the Limitation Act would not avail to extend the period of limitation for a suit to recover the amount of the debt.

Where a Court passes a decision under an error of law, but such decision does substantial justice between the parties, the decision ought not to be interfered with on revision. 66 P. R. 1904; 188 P. L. R. 1903, *followed*. 19 P. R. 1901; 68 P. L. R. 1901, *referred to*. (Rattigan, J.)

Ghasita *v.* Sultan.—93 P.R. 1911; 151 P.W.R. 1911; 228 P.L.R. 1911; 11 I.C. 445.

——S. 19.—Acknowldgment, form of—Mortgage–Statement by mortgagee recorded by settlement officer and signed by him—Effective to save limitation.

5 P.W.R. (N.W.F P.) 1914; 16 P.L R. 1915.

——*S. 19 and Art. 148—Acknowledgment, form of—Fresh contract—Entries in—Settlement records not signed by the mortgagee—Redemption.*

Held, that an entry in a settlement Record that a mortgagor is at liberty to redeem the land at any time on payment of the mottgage money, which is not signed by the mortgagee or any other person duly authorized by him in that behalf neither amounts to a contract between the mortgagor and the mortgagee, nor it constitutes an acknowledgment for extending under section 19 of Act IX of 1908, the period of limitation prescribed by Article 148 of the Act for a redemption suit. 116 P. R. 1891; 53 P. R. 1905; 75 P. L. R. 1905; 74 P. W. R. 1905, F. B., *followed*. 39 P. R. 1910; 59 P. L. R. 1910; 35 P. W. R. 1910, *referred to*. (Kensington, C. J.)

Wazir Singh *v.* Jhanda Singh.—178 P. L R. 1914 77 P. W. R. 1914; 24 I. C. 898.

——*S. 19—Acknowledgment, form of—Essentials—Signature.*

Where the original proprietor of a holding is known, an *adhsalidar* in the Kangra District is neither a joint owner nor a joint tenant within the meaning of section 111 of the Punjab Land Revenue Act. Consequently, he is not entitled to seek a partition of the holding, even if he was erroneously recorded as proprietor in some revenue records. 37 Cal. 918 P. C; 14 C. W. N. 962; 12 C. L. J. 240; 8 M. L. T. 228; 1 M. W. N. 691; 7 A. L. J. 1137; 12 Bom. L. R. 997; 20 M. L. J. 907; 7 Ind. Cas. 549, *referred to*.

Adhasali implies partnership in payment of revenue only. (Reid, C. J.)

Gaddu *v.* Rijha.—75 P. R 1911; 152 P. L. R. 1911; 191 P. W. R. 1911; 10 I. C. 147.

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——*S. 19—Acknowledgment, form of—Deposition to a Court in another case—Not signed by deponent or by his agent.*

A deposition made by the defendant in another case which was not signed by him or his duly authorised agent did not fulfil the requirements of S. 19 of the limitation Act 122 and 145 P. R. 1889 and 16 P. R. 1891, *distinguished*. 184 P. W. R. 1911, *followed*. (Shah Din, J.)

Kapur Chand *v.* Narinjan Lal.—34 P. R. 1918 ; 45 I. C. 99.

——*S. 19—Mortgagor and mortgagee—Acknowledgment—Limitation, saving of—Mortgage —Redemption suit—Statement before Settlement Officer.*

A statement by the mortgagees recorded at settlement in the *mist-i-tangih-i-hequq* Muzarian to the effect that a mortgage is still redeemable would, if signed or marked by the mortgagees, clearly be an acknowledgment within S. 19 of the Lim. Act. (Dobbs, J. C.)

Mobaud-Din *v.* Nowror.—5 N. W. F. P. 1914.

——*S. 19—Mortgagor and mortgagee—Acknowledgment of mortgage contained in a plaint.*

Held, that under section 19 of the Limitation Act, a statement contained in a plaint filed by the grandfather of the defendant mortgagees in a suit instituted by him to the effect that the land in suit had been mortgaged to him 55 years before suit amounted to an acknowledgment of liability in respect of the mortgagor's right to redeem. (Shah Din, J.)

Hari Chand *v.* Phirava Ram.—180 P. L. R. 1911 ; 82 P. W. R. 1911; 11 I.C. 377.

——*S. 19—Mortgagor and mortgagee—Acknowledgment—Suit for possession of land mortgaged—Acknowledgment contained in bonds—Part of consideration entered as being interest due on mortgage.*

Plaintiffs sued for possession of certain land which had been mortgaged to them and claimed an extended period by reason of the existence of certain acknowledgments by the mortgagor. This extension was claimed on the basis of acknowledgments contained in bonds dated 1899 and 1903 executed by the mortgagor in the plaintiffs' favour. In these bonds part of consideration was entered as being the interest due to the plaintiffs on the mortgage in suit.

Held, that the admission of liability to pay interest under the mortgage contained in the bonds of 1899 and 1903 amounts to an acknowledgment of liability under the mortgage including liability to give possession to the mortgagee. 25 C. 844 P. C.; 51 I. C. 985, *followed*. (Leslie Jones and Dundas, JJ.)

Anant Ram *v.* Inayat Ali Khan.—2 Lah. L. J. 519.

——*S. 19—Acknowledgment in favour of a minor—Effect—Revision—Interference in—Material irregularity—Omission to decide fact on which plea of limitation depends, if.*

Held, that if a balance be struck or an acknowledgment made within the purview of Section 19 of the Limitation Act, in favour

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of a minor, the period of limitation is to be computed from the date when the plaintiff becomes a major. I. L. R. XIII Mad. 135 XLV I. C. 694. That omitting to determine a question of fact on which the decision as to limitation depends is a material irregularity for which a revision lies. (Broadway, J.)

Ramji Lal *v.* Manya.—37 P. L. R. 1919; 52 I.C. 115.

——*S. 19—Limitation—Suit for—Claim on—Acknowlegment—Procedure.*

The defendants owed money to the plaintiffs. In lieu of the money due and a further advance the defendants agreed to sell their property to the plaintiffs. The plaintiffs not consenting to a particular condition, which they stated had not been agreed upon to be entered in the sale-deed, the matter fell through and the plaintiffs sued for their money with the interest originally fixed. The suit was dismissed on the ground that the claim as to debt was barred by limitation, being more than three years old, and that the claim as to the amount advanced for sale was not maintainable since the the plaintiffs had failed to accept the conveyance,

Held, (1) that the claim was not barred by limitation for when it was agreed that the defendants should sell their property to plaintiffs in lieu of the debt and a further advance, the plaintiffs were not entitled to demand payment of the debt. (2) That as it appeared from evidence that the sale agreement fell through owing to defendants' default, the plaintiffs were entit'ed to a refund of the amount advanced by them.

The Chief Court allowed interest at Rs. 6 per cent. per annum from the date on which the sale agreement fell through.

Acknowledgment to be sufficient within the meaning of section 19 of the Limitation Act means acknowledgment of present liability and must expressly and specifically import a liability to pay.

When a claim made against several defendants can be at once dismised as against one or more of them on a particular finding the Court should record the finding but delay passing the order of dismissal until the suit is wholly adjudicated upon. (Johnstone and Lal Chand, JJ.)

Hari Chand *v.* Capt C. Brook.—155 P.L.R. 1906.

——*S. 20—Authorised agent—Payment by.*

Payment by authorised agent without indicatting in what particular way it was to be appropriated but being in the handwriting of the person making it saves limitation since it is either paid as interest or if paid towards principal was in the handwriting of the authorised agent. (Scott Smith and Leslie Jones, JJ.)

Arjan Mal *v.* Amar Singh.—3 Lah. L. J. 250.

——*S. 20 Art. 135—Limitation—Mortgage—Suit for possesion of mortgaged property on default by mortgagor in payment of instalments.*

Where a suit was brought by the plaintiffs, appellants, as mortgagees for possession of the land mortgaged on default of payment of mortgage-money or for money due under the mortgage, *held*,

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that under the terms of the mortgage-deed a suit for money due did not lie, that for the appellants, the only remedy was a suit for possession as mortgagees, and the suit for possession was barred by Art. 135, Sch II, Act XV of 1877, the mortgagors' right to possession having been determined more than twelve years before suit on failure to pay six instalments of the mortgage money payable in thirty-one six monthly instalments. (Ried, J.)

Bishen Lal *v.* Khashali —30 P.L.R. 1909; 91 P.R. 1908; 153 P.W.R. 1908; 4 I.C. 921.

—*S. 20 (1)—Mortgage without possession—Sub mortgage by mortgagee—Payment by a mortgagor to sub mortgagee—Payment sufficient to save limitation as against original mortgagee.*

In 1896 one S. mortgaged his own land and that of his younger brother to K. C. without possession the mortgagor agreeing to pay one forth produce as interest. In 1898 K. C. sub-mortgaged half his rights to certain relatives now represented by M. R. the presented plff. In August 1904 the property of the mortgagor's widow was brought by K. B. and I. B who admittedly paid off half the debt due to R. C. but contended that they paid off the whole debt.

On the 7th March 1912 M. R. sued for the recovery of the principal due on the sub mortgage and for the value of the produce for three years. The real defts. were K. B. and I. B. the vendees and R. G. the original mortgagee. The Dt. Judge gave the plaintiff a decree against R. C. alone; on appeal by R. C. the decree was upheld by the Additional Divisional Judge. R. C. then preferred a second appeal to the Chief Court. It had been found as a fact that M. R. had continued to receive the produce from K. B. and I. B. up to November 1906 and the question for decision was whether payment of produce by K. B. and I. B to M. R. saved limitation as regards R. C. Where a debt is kept alive under the terms of S. 29 (1) by payment by a person liable to pay the debt, the result is to make it enforceable against any one liable for it and that consequently the payments of produce by K B. and I. B. saved limitation against R. C. also : 28 Bom. 248, *distinguished.* (Scott Smith and Leslie Jones, JJ) Ram Chand *v.* Mewa Ram.—3 P. R. 1918; 44 I. C. 213.

—*S. 20—Payment of interest—Saving of limitation—Nature of payment—Proof neceseary—Debiting interest in account book—Payment in reduction of debt, if saves limitation.*

Held, that, to avoid the bar of limitation in a suit for the recovery of money due on a mortgage-deed a plaintiff must establish not only that there was payment within 12 years prior to the date of the institution of the suit, but also that there was either an express intimation by the debtor, or proof of the existence of circumstances going to show, that the payment was on account of the interest on the particular debt sued on. 2. In the absence of express agreement debiting to interest in the books of account cannot be regarded as payment of interest I.L.R. 19 Mad. 340 at p. 342 6 M L.J. 177; I.L.R. 29 All. 773 A.W.N. (1907) 263; 4 A L J. 628, *referred to.* 3 Payments made by the debtor in reduction of the general balance of

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account against him, but without intimating that any of such payments was to be appropriated in satisfaction of the interest due on his debt, do not amount to a payment of interest as such to save the bar of limitation. 3 Bom. 198; 4 All. 512; A. W. N. 1882 114; 7 Ind. Cas. 7, *referred to*. (Shadi Lal & Leslie Jones, JJ.)

Muin-ud-Din *v.* Muhammad Ahmad.—68 P.L.R. 1916; 9 P.W.R. 1916; 31 I C. 782.

—S. 20—*Principal and surety—Payment of interest by principal debtor—Effect of running of time against surety.*

Held, (1) That the payment of interest by the principal debtor within the period of limitation gives a fresh starting point for limitation against the surety under Sec. 20 of the Limitation Act, (2) That the section does not lay down that the period is to be computed from the date of payment only as against the principal debtor or the person making the payment, and the creditor would be entitled to the benefit of the section against any person liable for the debt. (Martineau, J.)

Harbans Lal *v.* Nathu.—105 P.R. 1919; 53 I.C. 586.

—S. 20 *Proviso—Bond payable by instalments—Payments of instalments how to be proved?—Part—Payment.*

The proviso to S. 20 of the Limitation Act applies to payments of instalments fixed by and payable under a bond, which provides that on default in payment of one instalment the whole sum secured will be recoverable and the fact that any instalments were paid cannot be proved except by the production of entries signed by the debtor and reciting the facts of such payments. The payment of each instalment is a part payment of the principal amount due on the bond. (Reid, C.J. and Rattigan, J.)

Jawand Lal *v.* Sharf Din.—10 P.L.R. 1913; 28 P.R. 1913; 275 P.W.R 1912; 16 I.C. 967.

—S. 21—*Acknowledgment.*

The word 'only' in Section 21 of the Indian Limitation Act means that it must also be shown that the partners signing the acknowledgment had the express or implied authority of the others to do so; in a going mercantile concern such authority is to be presumed as an ordinary rule. (Walker and Maude, JJ.)

Bechha Lal *v.* Jai Pershad.—18 P.L.R. 1900.

—S. 22 *and Sch. 2 Art. 11—Auction—Purchaser made party after the expiry of one year.*

Plaintiff's objection to attachment was disallowed on 9th July 1892, and sale was confirmed on 24th January 1893; and though plaintiffs sued for possession on the 18th August 1892, he had not joined the auction-purchaser, nor did he pray for establishment of right with reference to the order disallowing his objection until 1895, and then only after certain directions of the Appellate Court which remanded the cause for re-trial.

Held, that plaintiff's suit was barred under Article II, Schedule II, and Section 22, Limitation Act, 1877. (Harrison, J.)

Ganpat Mal *v.* Bhagat Ram.—74 P.L.R. 1901.

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—— *S. 22—Hindu Law Joint family—Debt due to—Suit for recovery of co-parcener—Joint as defendant after expiry of limitation period.*

G. and others, members of a joint Hindu family sued A. for recovering a debt due to them. One U. applied to be joined as a co-plaintiff alleging that he was a co-parcener with the plaintiff who denied his right. The 1st Court made U. as co-defendant, and dismissed the suit on the grounds that (1) U. being the co-parcener the suit was not maintainable without joining him as a co-plaintiff and (2) section 22 of Act XV of 1877 barred whole of the claim when U. was made a party.

Held, that under the above circumstances the suit is neither barred by section 22 of Act XV of 1877, nor does it necessarily fail by reason of not joining U. as co-plaintiff at the time of its institution. 57 P.R. 1905 *followed*. 69 P.R. 1906; 79 P.R. 1906, *distinguished* (Kesington and Lal Chand, JJ,)

Gobru *v.* Amira,—20 P.R. 1909; 24 P.W. R. 1909; 1. I.C. 455.

— *S. 22—Parties joinder of—Joint family—Partnership—Right of co-promisees to sue separately—Right to relief.*

Held, by the Full Bench, that when one of several persons jointly entitled, as partners, members of a joint Hindu family or otherwise, to sue together brings a suit separately in his own name within the period of limitation and subsequently joins the other persons, as defendants, after the period of limitation has expired the suit is not barred against the defendant against whom it was filed within the period of limitation.

That section 22 of the Limitation Act does not cover such cases and the English rule in this matter does not apply in India.

That the Limitation Act must be interpreted strictly and the bar of limitation should not be extended to any cases not clearly covered by its provisions. That one of several co-promisees may sue on his own account and section 45 of the Contract Act does not prohibit this

That one plaintiff does not lose his rights to enforce an obligation because other entitled to share in that right have lost their remedy only by the expiry of the period of limitation. That in such cases a plaintiff is not restricted to recover his propotional share. (Clark, C. J. Chatterj and Robertson, JJ.)

Labhu Ram *v.* Kanshi Ram.—57 P. R. 1905; 76 P.L R. 1905.

——*S. 22—Joinder of defendant after expiry of limitation period.*

When a plaintiff is entitled to proceed against such of the original promisors or their representatives as he pleases under sections 42 and 43 of the Contract Act, his suit is not barred under section 22 of the Limitation Act against the promisors or the representatives

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of the promisors against whom the suit is filed within the period of limitation prescribed for the suit by reason of another promisor or representative of a promisor being impleaded after the expiry of the period of limitation. 53 P. R. 1896 *referred to.* (Chatterji and Kensington, JJ.)

Mst. Jawahri *v.* S. Hari Singh.—81 P. R. 1905; 116 P. L. R. 1905.

—*S. 22—Limitation—Addition of defendant after expiry of limitation period.*

Section 22 of the Limitation Act does not apply when the original suit is continued against the added defendant, who derives his title from the original defendant, by an assignment pending the suit.

A pre-emptor's suit cannot be dismissed as barred by limitation by the operation of Section 22 of the Limitation Act, when the vendee transfers the property in dispute after the institution of the suit for pre-emption, and the transferee's name is added as a co-defendant at a time when the original claim would be barred by limitation. (Lal Chand, J.)

Fateh Muhammad *v.* Said Ahmad.—3 P.R. 1907; 3 P.L.R. 1908;

—*S. 22 Art. 10, and 120—Pre-emption—Transferee from vendee added as defendant—Starting point of limitation—Nature of claim—Parties.*

Held, that where in a suit for pre-emption instituted within limitation against the original vendee, a transferee from the original vendee (by assignment of a date previous to the date of institution of the suit) is added as a defendant after limitation has expired as against the original vendee, the claim *as against the transferee* is governed not by Article 10 Schedule 1 of the Indian Limitation Act IX of 1908, but by Article 120, and the starting point of limitation is the date of the transfer made by the original vendee in favour of the transferee. 25 P. R. 1903; 107 P. R. 1907; 99 P. W. R. 1907 *overruled.* 13 Ind. Cas. 645; 9 A. L. J. 211, *followed.*

Held, also, that (1) Article 10 applied only to a suit against the original purchaser under the sale sought to be impeached and takes no cognizance of the second vendee to whom the subject of the first sale has been transferred subsequently.

(2) The second vendee not being a party to the sale sought to be pre-empted, no cause of action accrues to the pre-emptor *as against him* by reason of that sale.

Held, further, that (1) A right of pre-emption which is sought to be enforced by a pre-emptor by suit always arises in respect of a *particular* sale which furnishes him with a definite cause of action; the only parties against whom he has that cause of action are the parties to the sale sought to be impeached and a subsequent transferee from the original vendee is not directly concerned in or affected by the suit for pre-emption as originally brought:

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(2) The suit as regards the second vendee added as a defendant cannot be regarded as a suit for pre-emption. 6 P. R. 1909; 7 P. W. R. 1909; 11 Ind Cas, 91; 11 P. R. 1893; 84 P. R. 1911; 270 P. W. R. 1911; 13 Ind. Cas. 792, *referred to.* (Rattigan, Shah Din and Beadon, JJ.)

Karam Dad *v.* Ali Muhammad.—31 P. R. 1913; 28 P. W. R 1913; 61 P. L. R. 1913; 18 I.C. 70.

——S. 22 (1)—Applicability—Not applicable where court adds a party under O. 21, R. 20 Civ. Pro. Code.

268 P.L.R 1914; 25 I.C. 549.

——S. 22—Gift by widow—Dispute regarding property on widow's death under section 145, Criminal Procedure Code—Suit by person adversely affected by order—Limitation—Part of property in possession of mortgagee—Power of Civil Court to question validity of Magistrate's order—Profarma defendants joined as plaintiffs—Effect of limitation—Date of institution of suit. (Kensington and Chevis, JJ.)

Bhagwana Das *v.* Bhan Mal.—14 I. C. 566: 84 P, R. 1912; 137 P.W R. 1912.

—— *S. 23—Continuing injury—Meaning.*

Erecting chappars on land belonging to another is not a continuing injury within S. 23. (Broadway, J.)

Lal Singh *v.* Hira Singh —3 Lah.L.J. 128; 60 I.C. 20.

—— *S. 23 art 120, 112 and 144—Court-fee—Revision—Religious institution—Suit for.*

A suit was brought against M, the Mutwali and Imam of a mosque, by some persons, on behalf of the general body of worshippers, on the allegation that although the mosque belonged to the Hanafi section, M had changed his religious views and turned a follower of the Mirza of Quadian, four years before suit and that therefore was disqualified from discharging his duties. The reliefs sought were :—

(*a*) That the defendant be declared unfit for the office of Imam of the Masjid ;

(*b*) That he be ejected from the property appertaining to the Masjid ; and

(*c*) That he be dismissed from the office of Mutwali.

Held, (1) That, since the plaintiffs simply seek the removal of the defendant from the office of Mutwali, which would involve his ejectment from the immoveable property, of which he was in possession in that capacity, and do not seek possession of the property for themselves, full stamp need not be levied upon the value of the said property. 56 P. R. 1896, *followed.*

(2) That, it having been found concurrently by both the lower Courts that M. had turned a follower of the Mirza of Quadian in 1891, and not four years before suit as alleged in the plaint, the Chief Court has no power under S 70 (*b*) of the Punjab Courts Act to question that finding on revision.

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(3) That the suit was barred by limitation, under Art. 120 of the Limitation Act, having been instituted more than six years after M's change of religion in 1891, when the cause of action accrued. Neither Art. 142 nor 144 has any application to the case.

(4) That such change and the subsequent persistent adherence to such newly adopted views cannot properly be described as s continuing change, amounting to a continuing wrong, such as is contemplated by the terms of S. 23 of the Indian Limitation Act; and that the plaintiffs should have come to Court within six years under Art. 120 of the Act, since the time when the alleged change in views occurred (*b*).

(5) That the general body of worshippers have no right to remove a Mutwali and Imam at their will and pleasure without assigning and establishing sufficient cause for such removal. (Rattigan and Shah Din, JJ.)

Mir Yad Ali *v.* Mubarak Ali.—53 P.R. 1909; 37 P.W.R. 1908; 2 I.C. 107.

——*S 23—Fresh Cause of action—Appropriation of income by co-sharer—Suit for declaration.*

Every fresh appropriation of the income of property by one co-sharer to the exclusion of others gives rise to a fresh cause of action to the other co-sharers for a suit for a declaration of their rights. (Chevis and Shadi Lal, JJ.)

Harnam Singh *v.* Makhen Singh,—21 P.L.R. 1918; 43 P.W.R. 1918; 44 I.C. 51,

——*S. 23—Nuisance—Continuing wrong.*

Causing nuisance is a continuous wrong independent of contract and therefore a fresh period of limitation begins at every moment during which the wrong continue.

Rukn-ud Din *v.* Altaf Ahmad.—60 I.C 529.

——*S. 23, Art 120—Religious Institution—Occupation of balakhana over mosque and upper hujra as a private residence of Mutwali—Wrongful acts—Mahomedan Law—Limitation for suit for declaration and injunction—Continuing wrong.*

Held, that the occupation of balakhana over the prayer hall of a mosque and of the upper storey of a hujra which forms part of the mosque by the mutwali as a private residence is a wrongful act according to Mahomedan Law and constitutes a valid cause of action in favour of the worshippers.

Held, also that such occupation is a 'continuing wrong' within the meaning of S. 23 of the Lim. Act 55 P. R. 1909, distinguished (Shah Din and Leslie Jones, JJ.)

Mahomed Ahmed *v.* Mahomed Fazal.—31 P.R. 1917; 31 P.W.R. 1917; 39 I.C. 116.

—*S. 23, Art. 120—Suit for injunction restraining deft. from discharging water on to plaintiff's roof—Limitation—Continuing wrong—Terminus as quo—Injunction—Damages—New case.*

Held, that article 120, being the residury article, prescribes the period of limitation for a suit for injunction; but *terminus a quo* is the date when the right to sue accrues.

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Held, also, that the plaintiffs had a fresh cause of action on each occasion when the defendant discharged water through the *parnala* on to the plaintiff's roof, and that they are entitled to rely upon the last occasion when this was done as the starting point of limitation, unless the defendant has acquired an indefeasible right of easement by 20 years' enjoyment 24 W. R. 97; 25 I. C. 185, *followed*.

Held, further, that the question that as the plaintiffs have not suffered any substantial injury, they should have been granted not a mandatory injunction but a Monetary compensation, was not raised in either of the Courts below, and it cannot be raised for the first time in the Court of second appeal. (Shadi Lal, C. J.)

Nur Muhammad *v.* Gauri Shankar.—2 Lab. L. J. 463; 56 I. C. 1003.

——*S. 23, Art. 120—Village road—Shamilat land-Thoroughfare—Encroachment by defendant, a member of the proprietary body—Suit to restore the land to its original use.*

Held, that a suit by a member of the proprietary body of a village against another for ousting the latter from the encroachment made by him upon the *shamilat* land devoted to the purposes of a road for inter-village communication, and for restoring it to its original use, is not governed either by Art. 32, 142 or 144 or 146 (*a*) but by Art. 120 of the Limitation Act (1908), and the time begins to run from the date of trespass. It is not also a continuing wrong to which the provisions of S. 23 of the said Act can apply (*a*)

Obiter:—*Held*, also, that Art. 144, like 142, applies to suits for possession based on plaintiff's own title. (Reid, C. J.)

Achar Singh *v* Badhawa Singh.—124 P. R. 1912; 132 P. W. R 1912; 2 P. L. R. 1913; 15 I C 285.

——*S. 24, Arts. 2, 38 - Municipality—Suit against, for compensation for injury to plaintiff's estate resulting from acts of Municipality—starting point of limitation—Punjab Municipal Act XX of 1891, S. 20 (a) Omission to give notice.*

Held, that a suit, to recover damages caused by an act of Municipal Committee which has been done in pursuance of any provisions of the Municipal Act XX of 1891 is governed by 90 days Limitation as is provided under Article 2 of II Schedule to the Indian Limitation Act XV of 1877. This article is intended to protect the Public Bodies who purport to act in the exercise of the powers given them by the Legislature against state claims. Neither the omission of the Committee to give notice under section 120 (c) of the said Act nor the failure to inform in so many words that the Committee is acting under such and such provision of Law does take the case out of the operation of the article. It applies with equal force whether the damage has been done simultaneously with the act or some time after, but the cause of action arises when the injury has actually accrued. Nos. 124 P R 1881 and 160 P.R 1883; 5 S. W. R 137;

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98 L. T 4 (H.L. J.) (I. Q. B. 503) (1891) (14 Revised Reports 335), *followed.* (Rattigan and Shah Din, JJ)

Richard Watson *v.* The Municipal Corporation of Simla.—72 P.R. 1909; 108 P. L. R. 1909; 112 P.W.R. 1909; 2 I C 819.

——S. 26—*Easement—Obstructon—Interruption—Meaning of.*

The word "interruption" as used in section 26 of the Indian Limitation Act applies only to a cessation of enjoyment followed by a further period of enjoyment. Where the plaintiff, who claimed a right of easement did not enjoy the easement for more than two years next preceding the date on which he filed the present suit—

Held, that the suit was barred under section 26 of the Limitation Act for the word "interruption" did not apply to the obstruction and cessation of enjoyment in the present case. That the fact that the plaintiff did not acquiesce in the obstruction did not save his right from being barred. (Johnstone, J.)

Sayad Amir Haidar Shah *v.* Fajja.—73 P. R 1905; 203 P. L R. 1905.

——*S. 26—Easement—Right to use water Course—Enjoyment for 19 years—Effect of obstruction within one year of suit.*

Plffs. began to use a water course in 1896 and continued to use it until 1915 when defts. interfered. The present suit was instituted before the expiry of one year from the date of such interference

Held, that as it was not pleaded that the water course had been used by plffs. with deft's. permission, it must be taken that plff's. enjoyment was *nec-vi-nec clam, nec precaria.* Though the period of actual enjoyment was in this case only 19 years, 6 months and 19 days, the obstruction by Deft. not having been acquiesced in for one year must be ignored for the purpose of calculating the period of 20 years laid down in S. 26 of the Lim. Act.

As the period of actual enjoyment and the period of after obstruction up to the date of institution of suit together made up the full period of 20 years and this period ended within 2 years next before the institution of suit the plffs. had established their right of easement. (Shadi Lal, J.)

Sawan Singh *v.* Chattar Singh, 48 P. R. 1918; 46 I.C. 17.

——*S. 26—Easement of supply of water from natural stream—Acquisition—Limitation.*

Held, that easement can be created in natural as well as in artificial stream, so a continuous user of water from a natural stream for more than 20 years before dispute establishes a right of easement as is provided under section 26 of Act IX of 1908. (Rattigan, C. J)

Abdul Rahman *v.* Muhammad Alam.—57 P. R. 1918; 130 P. W. R. 1918; 104 P. L. R. 1918; 46 I. C. 411.

——*S. 26, Art. 91—Receipt extinguishing mortgage.*

Held, that a receipt which acknowledges extinction of mortgage right of the value of over Rs. 100 in immoveable property is compulsorily registrable under clause (n) of section 17 of the Registration Act 1887 as amended. 39 P. R. 1904; 91 P.L R. 1904 *followed.*

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Held, also, that as a document compulsorily registrable cannot be admitted in evidence when it has not been registered. Article 91 of the second Schedule of the Limitation Act is not applicable to a claim which involves the cancellation of such a document. (Roberts and Kensington, JJ.)

Dwarka Das *v.* Sardar Lachman Singh.—163 P.L.R. 1905.

——*S. 26—User as of right—Presumption.*

Plffs. and defts were co-sharers in a well. To gain access to this well from the road it was necessary for the plaintiff to go across certain fields belonging to defendants. Plaintiffs had used this road without let or hindrance for a period of 20 years and this road was the only road they could use to gain access to the well.

Held, that having regard to the habits of the people of this country the enjoyment of the road "as of right" within S 26 of the Lim. Act should have been presumed. (Broadway, J.)

Diwan *v.* Jagta.—1 Lah. 206; 56 I. C. 728.

——*S. 26—User of intermittent nature—Absence of assertion of right—Acquisition of rights*

Held, that the user of an intermittent nature accompanied by no assertion of right is a very common phenomenon in this country and arouses no opposition. The pond is not susceptible of actual physical possession by the legal owner and possession follows title, unless the usurper can prove long and continuous extrusion of the rightful owner. (Le Rossignol, J.)

Bhuru *v.* Datu Ram.—1922 Lah. 59; 4 Lah. L. J. 461.

——*S. 28 Art. 148—Adverse possession—Immoveable property—Right to birt—Exclusive enjoyment by mortgagee.*

The right of a Hindu to birt is in the nature of immovable property and article 148 of the second Schedule of the Limitation Act governs a suit for redemption of a mortgage thereof. Section 28 of the Limitation Act is applicable to a claim to a mortgagee's right to birts such right being on the footing of a mortgage of immoveable property. And exclusive adverse enjoyment of birt by the mortgagee or his representatives for more than twelve years extinguishes the right persons claiming a share to the mortgage money in a suit for redemption. (Reid, J.)

Mohan Lal *v.* Janki.—34 P.R. 1908; 163 P.L.R. 1908; 98 P.W.R. 1908.

——*S. 28 Art. 144—Adverse possession—Suit by vendee or auction purchaser for possession.*

Held, that ordinarily a purchaser of immoveable property who has not acquired possession has 12 years from the date of the purchase within which he can sue for possession, but after that time any suit brought by him would be time barred. In the case of a vendee who has obtained a decree or of an auction purchaser, if merely symbolical possession has been obtained, the decree-holder or auctioner-purchaser has 12 years from the date of obtaining symbolical possession within which he may bring a suit for possession—at the end of that time his

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rights are extinguished. I. L. R. 5 Cal. 584 ; I. L. R. 24 Cal. 715 ; I. L. R. 18 Bom. 37 ; I. L. R. 25 Bom. 275 ; I L. R. 25 Bom. 358 ; 19 All. 499, *followed*. (Reid, C. J. and Chevis, J.)

Amolak Shah *v.* Maula Bakhsh.—70 P. L. R. 1910 ; 58 P. W. R. 1911 ; 8 I. C 236.

——*S. 28, and Sch. I—Defences—Whether applicable to.*

Schedule I provides periods of limitation within which suits must be brought. Hence it is not applicable to defences as no mention is made about them also. S. 28 does not bar the defence that the person who resists the claim had not been out of possession for the limitation period. (Shah Din and Chevis, JJ.)

Gokal Chand *v.* Niadar Mal.—1 P.R. 1916 ; 32 I.C. 485. 206 P.W.R. 1915.

——*S. 28, Sch. II, Art. 44—Limitation—Minor—Suit for possession of immoveable property—Muhammadan Law—Transfer by* de facto, *but not legal gurdian.*

An alienation by a *de facto* guardian who is not legal guardian of the minor and is not authorised by custom to transfer his ward's property is void, and the suit brought by the minor after attaining majority for possession of immoveable property against the transferree from such guardian is not governed by article 44 of the second schedule of the Limitation Act, for it is not necessary for the minor to have alienation set aside. (Clark, C. J.)

Sardar Shah *v.* Haji.—28 P. R. 1909 ; 182 P. L. R. 1903 ; 1 I. C. 545.

——*S. 28, Sch. II, Art. 10—Limitation-Pre emption suit—Property in suit in possession of tenant—Property capable of physical possession.*

Held, that property in the possession of tenants cannot be said to be capable of Physical possession within the meaning of Article 10 of second schedule of the Limitation Act 88 P. R. 1905, s. c., 179 P. L. R. 1905, *explained*. I. L. R. XXIV All., 18 (P. C.) 16 P.R. 1902, 73 P. R. 1885, 48 P. R. 1884, *followed*. (Clarke, C. J. Reid and Chatterji, JJ.)

Ghulam Mustafa *v.* Shab-ud Din Khan.—49 P. R. 1908 ; 63 P. L. R. 1908 ; 1 P. W. R 1908 (F.B.)

———*S. 28, Art. 179—Civil Procedure Code Act XIV of 1882, section 230—Execution of decree—Limitation—Step in aid of execution—Application by legal representative for his name to be substituted in place of deceased decree-holder—Decree twelve years old—Application in continuation of previous applications for arrest of judgment-debtor.*

Held, that an application by the legal representative of a deceased decree-holder for his name to be substituted in place of the deceased is a step in aid of execution within the meaning of clause 2 of article 179 of the second Schedule of the Limitation Act. I. L. R. 29 All. 301, *followed*.

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When applications for the arrest of the judgment-debtor are ineffectually made within twelve years from the date of the decree and struck off owing to the judgment-debtor not being found, a fresh application for arrest, made after the expiry of twelve years, which is not otherwise barred, may be regarded as made in continuation of the previous applications, and cannot be held to be barred by the provisions of section 230 of the Civil Procedure Code, 1882. I. L. R., XXI All., 155, VI Mad. 365, *followed*. (Reid, C. J.)

Mst. Prabh Devi *v.* Dewan Chand.—6 P. L. R. 1910; 125 P. W. R. 1910; 6 I. C. 490.

— *S. 28 and Art. 135—Mortgagor and Mortgagee—Constructive Possession of prior mortgagee—Puisne mortgagee entitled to obtain possession on redemption—Rights of puisne mortgagee—Limitation.*

Plaintiff, son of one of the mortgagors, sued the defendants 1 and 2, sons of a puisne mortgagee, and impleaded the other mortgagor as defendant No. 3. The mortgage in favour of the father of defendants 1 and 2 was made on the 24th November 1899. The lands mortgaged with the exception of 2 *kanals* were already mortgaged to the previous mortgagees and were in their constructive possession through the mortgagors as their tenants. The puisne mortgagee was put in possession of 2 *kanals* of land and the possession over the land already under mortgage was deferred and the puisne mortgagee was empowered to take possession by effecting redemption of the prior mortgages. In 1915, puisne mortgagee made an application to the Revenue Court seeking redemption and on the 26th of July 1915 the Court made an order for the redemption of the previous mortgages. Possession was awarded to the puisne mortgagee (or his sons defendants 1 and 2) on the 31st July 1916. The final order directing mutation of names was made on the 29th of January 1917, in the same year the defendants 1 and 2 served a notice of ejectment on the plaintiff and defendant No. 3. Thereupon the present suit was instituted by the plaintiff for a declaration that the land in dispute was not under mortgage with defendants 1 and 2 and that the plaintiff and defendant No. 3 were in possession thereof as owners. The first Court holding that the puisne mortgagee or his sons defendants 1 and 2 having failed to make payment to the previous mortgagee within 12 years, their rights as mortgagees were barred by time and were extinguished according to section 28 of the Limitation Act, decreed the claim. On appeal the lower appellate Court substantially agreed with the Court of first instance and upheld the decree passed by it.

Held, that the right of the defendants to obtain possession under the mortgage in their favour was in no way extinguished and they had full right to obtain possession within 12 years from the date of the redemption of the prior mortgages. 48 I. C. 916, *followed*. 4 I. A. 15; 38 P. R. 1894, *referred to*. 14 C. W. N. 439, *distinguished*. (Abdul Raoof, J.)

Basanta *v.* Indar Singh.—2 Lah. L. J. 419.

LIMITATION ACT, Ss. 28 and 22.

——*S. 28 and Sch. I Art. 142—Suit for possession against trespasser—Plaintiff can succeed on proof of mere possession before his dispossession—Defendant must prove his own title to ownership—Adverse possession—Extinguishment of right to immoveable property.*

In 1884, F, father of defendants Nos. 2 to 5 sold to D, plaintiff, 510 *kanals* of land in the village S together with a share in the village *shamilat* for Rs. 6000. D was not given possession by F and he sued F and got a decree for possession in 1887 and obtained possession in February, 1898. On 25th July, 1893, D mortgaged this land together with other land to B, defendant No. 1, now represented by N, for Rs 2,900. On 26th July, 1898, F's sons sued D for possession of the 510 *kanals* sold to him in 1884, on the ground that the sale was without consideration and valid necessity, but in their plaint, F's sons made no mention of the *shamilat* land. In that suit, the sale was held valid to the extent of Rs. 3, 915-8-0, and a decree for possession of the land claimed was given in favour of F's sons on payment of the said sum of money. The decree made no mention of the *shamilat* land. In July 1905, F's sons, in execution of the decree, not only obtained possession of the land decreed to them but also of the appurtenant *shamilat*. B, having lost a very large portion of the property mortgaged to him by D, sued him for compensation and obtained a decree for Rs. 4,500. D sued for redemption of the balance of land mortgaged by him to B after deducting 510 *kanals* for which F's sons had obtained a decree against him, impleading as defendants B, F's sons and transferrees of portions of the land from the latter.

Held, that D's possession, which was adverse as against F's sons from 19th July 1893 when F died continued for more than 12 years at the time of B's dispossession on 25th July, 1905, and that therefore D had acquired a good title by adverse possession extending for over 12 years and the right of defendants 2 to 5 (*i. e.*, F's sons, if any, had been extinguished, having regard to S. 28, Limitation Act. When F's sons took possession of the *shamilat* land in execution of the decree for possession of the proprietary land sold by their father, their Act was unlawful and their possession became that of trespassers.

Where a plaintiff has been forcibly dispossessed of immoveable property by a person having no title, he can sue for possession simply on the strength of the possession which he had before he was dispossessed, provided he sues within the 12 years' period allowed by Art. 142 of the Limitation Act. 78 P. R. 1902, *followed*. (Shah Din and Scott Smith, JJ.)

Paras Ram *v.* Nathumal.—19 P. R. 1913 ; 212 P.L.R. 1913; 19 I. C. 222.

——*S. 32—Claim for money maintainable againsst some of the representatives of a deceased debtor—Addition of other representatives after period of limitation.*

Held, that where two heirs of a deceased debtor were impleaded as defendants in the first instance, and two others were added after

LIMITATION ACT, Arts. 2 and 10.

limitation had run out, the suit was not barred against the original defendant, and it could only be dismissed as against the added defendants. (Johnstone, J.)

Bawa Nanak Singh *v.* Ali Sher—32 P. W. R. 1907.

—— *Arts. 2, 12 and 91—Claim petition allowed—Limitation—Declaratory suit—Sale to defraud a creditor—Fraudulent transfer by husband in favour of wife.*

A. owed a debt to *B.* who in June, 1903, gave him notice that he would be sued unless he paid up his debt. *A.* failed to pay the debt and *B.* sued him on 19th May, 1904, and obtained a decree on 3rd June 1904. In execution of the decree, *A's* wife objected to the attachment of property basing her claim on a sale effected by *A.* in her favour on the 7th August, 1903, in consideration of her dower. The objection was allowed on the 12th January, 1910, *B.* on the 22nd October 1910 instituted a suit for declaration that the property was liable to attachment under his decree.

Held, (1) that the declaratory suit was within time, Article 11 of the Limitation Act Schedule being directly applicable to the case; even if Article 91, which had no bearing on the case, applied, the starting point would still be the 12th January, 1910, that being the date when the fact of *B.'s* sale to his wife became known to plaintiff ;

(2) that *A's* sale to his wife was an obviously fictitious transfer to defraud a creditor and not a *bona fide* sale. 6 P. R. 1901, *referred to.* (Kensington, J.)

Raja Ram *v. Mst.* Umdan.—179 P.L.R. 1913; 118 P.W.R. 1913; 18 I.C. 519.

—— Art. 10—Applicability—Pre-emption—Pre-emptor not allowed to extend time on account of delay in Deputy Commissioner's action. *See* Pre-emption—Limitation.

59 P.W.R. 1913; 110 P.L.R. 1913; 79 P. R. 1913 ; 19 I. C. 239.

—— *Art. 10—Applicability of.*

In pre-emption suits brought by rival pre-emptors in respect of the same sale, in which each pre-emptor is impleaded as a defendant in the suit instituted by the other, the period of limitation, as between the rival pre-emptor, is that prescribed by Art. 120 of the Limitation Act, and not that prescribed by Art. 10 of the Act or S. 29 of the Punjab Pre-emption Act. 7 A. 167 ; 11 P. R. 1893; 20 P. R. 1908, *rellied upon.* (Shah Din, J.)

Ilahi Bux *v.* Muhammad Rob Nawaz Khan.—80 P. R. 1912 ; 186 P. W. R. 1912 ; 14 I C. 328.

—— Arts. 10 and 120—Applicability—Pre-emption Suit—Suit within the limitation period against original vendee—Transferee from vendee added as defendant after limitation had expired as against original vendee—Limitation as against transferee—Starting point—Nature of pre-emption suit considered. *See* S. 22 Arts. 10 and 120.

25 P. W. R. 1913 ; 61 P. L. R 1913 ; 31 P. R. 1913 ; 18 I. C. 70.

LIMITATION ACT, Art. 10.

— *Art. 10—Execution decree—Sale—S. 316 C. P. C., 1882, sale certificate granted under—Ss. 51 and 89, Registration Act, 1877—Copy of sale-certificate registered under S. 89 Registration Act—Effect.*

A sale-certificate granted under S. 316, C. P. C., of which a copy has been forwarded to the registering officer in accordance with S. 89, Registration Act, and duly filed in register of non-testamentary documents relating to immoveable property prescribed in S. 51 of the Act by the registering officer, is not a registered document within the meaning of Art. 10, Limitation Act. (Reid, C. J. Robertson and Rattigan, JJ.)

Fatteh Singh *v.* Daropadi.—186 P. W. R. 1908; 142 P. R. 1908.

— *Art. 10—Possession—Pre-emption suit for—Land in possession of tenant.*

The sale deed was Registered on the 16th September, 1909, and a suit for pre-emption was filed on the 8th July, 1911. A portion of the land sold was in the possession of tenants at the time of sale. *Held*, that under clause 2 article 10 of the 2nd schedule of the Indian Limitation Act IX of 1908 the suit was barred by limitation. 49 P. R. 1908; 1 P. W. R. 1908 (F. B.), *followed*. I. L. R. 28 All 224, *not followed*. (Agnew, J.)

Sheoji *v.* Fajar Ali Khan.—230 P.L.R. 1913; 148 P.W.R. 1913; 20 I.C. 475.

— Art. 10—Pre-emption suit—Subsequent vendee impleaded—3 years period of limitation. *See* Pre-emption Act, S. 11.

17 P.R. 1915; 186 P.L.R. 1915; 28 I.C. 695.

— *Art. 10—Pre-emption—Date of registration of sale deed.*

The period of limitation prescribed by article 10 of the second schedule of the Limitation Act in case the property sold does not admit of physical possession runs from the date on which the sale-deed is actually registered and not from the date on which it is presented for registration. 10 P. R. 1881, *followed*. (Reid and Lal Chand, JJ.)

Bhanjan Ram *v.* Gopale Ram.—92 P.R. 1906; 123 P.L.R. 1906; 100 P.W.R. 1906.

— *Arts. 10 and 150—Pre-emption suit—Mortgage by way of conditional sale.*

Article 120 of the second schedule of the Limitation Act governs a suit for pre-emption on a claim in respect of a conditional sale of a share in a joint *khata*. The period of limitation begins to run from the date of expiry of year of grace allowed by Regulation XVII of 1806.

When the *wajib-ul-arz* allowed the right of pre-emption in favour of a *bhai nazdiki* as against co-sharer in a joint holding—

Held, that a collateral of the vendor related to him in the nineth degree could not be held entitled to prefer claim as a *bhai nazdiki*. (Johnstone and Harry, JJ.)

Sheoji Singh *v.* Sheoji Singh.—129 P.R. 1906; 84 P.L.R. 1907; 154 P.W.R. 1906.

LIMITATION ACT, Art. 10.

——*Art. 10—Pre-emption—Limitation—Starting point—Wrong description of property sold and subsequent rectification of deed—Mutation—Land under occupation of tenants—Physical possession.*

The sale-deed in respect of a certain land was executed on 22nd September 1913. Mutation was effected on the 28th October 1913, when it was discovered that by mistake wrong numbers of the fields were entered in the sale-deed. The Revenue Officer ordered mutation in respect of numbers intended to be sold.

The pre-emptor, a *Zaildar* was present at the mutation proceedings. On the 27th October 1914, he instituted a suit for pre-emption and it was contended on his behalf that the sale must be deemed to have taken place on 28th October 1913, and the suit was consequently within limitation.

Held, that the contention was not valid. There was only one sale of the property and that took place when the sale-deed was executed on the 22nd September 1913, and the suit was consequently barred by limitation. (Rattigan, J.)

Ganga Ram *v.* Sardara.—64 P. L. R. 1916; 60 P. W. R. 1916; 35 I. C. 278.

——*Art. 10—Pre-emption suit—Limitation—Starting point.*

Held, following I. L. R. VII All 291, that article 10 of the Limitation Act was applicable to the suit and the period of limitation commenced from the date of registration of sale-deed and not from the date on which right to redeem the land which included the land in suit was determined in a suit. ((Shah Din, J.)

Nanku *v.* Lachhman.—67 P. L. R. 1918.

——*Art. 10—Pre-emption suit—Limitation—Starting point—Possession taken prior to date of deed of sale—Effect.*

Plaintiff sued on 20th December 1915 for pre-emption in respect of a sale by a registered deed dated 1st December 1914. It was pleaded for defendant that the suit was barred by limitation as the vendee had taken actual possession "of the property sold some two months prior to the 21st December 1914.

Held, that the possession referred to in Art. 10 of the Limitation Act must be possession under the sale sought to be impeached," and such possession could only be taken in this case from the 21st December 1914, the date of the deed of sale, and that consequently the suit was not barred by time. (Shah Din, J.)

Ram Peara *v.* Rup Lal.—80 P.R. 1918; 181 P.W.R. 1918; 48 I.C. 102.

——*Art. 10—Pre-emption—Share in undivided joint property—Limitation.*

Obiter: A mere share in joint undivided property is not capable of physical possession and Art. 10 of the Limitation Act is inapplicable to such cases. (Le Rossignol, J.)

Sardar Ali *v.* Fazil—68 I.C. 895.

——*Art. 10—Punjab Pre-emption Act (I of 1913)—S. 30—Scope and applicability—Sale including share in the shamilat—Suit for pre-emption in respect of—Limitation.*

LIMITATION ACT, Arts. 10 and 11.

Held, that the Section 30 of the Punjab Pre-emption Act only comes into operation in cases not provided for by Article 10 of Schedule 1 of the Indian Limitation Act.

A suit for pre-emption in respect of property consisting of certain specific plots of land together with a share in the village *shamilat* is governed by Article 10 of Schedule 1 of the Limitation Act, inasmuch as the share in the *shamilat* does not admit of physical possession. Malak Singh *v.* Muhammad, (65 P. R. 1889), *followed*. (Scott Smith, J.)

Lehna *v.* Bhagat Singh.—68 P. R. 1918; 158 P. W. R. 1918; 108 P. L. R. 1918; 47 I .C. 359.

—*Art. 10—Suspension of limitation.*

A sold his occupancy rights in a plot of land to B on 19-9-12 but refused to register the sale-deed. He again sold the same property to C on 15—10—12 on which B by proper proceedings got the sale-deed registered on 22-11-12, C in the meanwhile got possession and B then sued for possession, got a decree and possession thereunder on 15-6-14. C sued for pre-emption on 1-10-15. *Held*, that the second part of Art. 10 barred the suit. (Shadi Lal, C.J. and Wilberforce, J.)

Nagina Singh *v.* Dani Chand.—62 I.C. 797.

—*Art. 11 (1)—Applicability—Whether Court's order under O. 21, R. 90 Civil Procedure Code, to bring a suit* ultra vires—*Question of fact—Whether house in dispute is* Dharmsala *and dedicated to public and charitable purposes.*

Art. 11 of the Limitation Act, is not applicable to a suit where the order of the court directing plaintiffs, to bring a suit to establish their rights was *ultra vires*.

The question whether the house in dispute is *dharmasala* and has been dedicated to the public for religious or charitable uses is one of fact and cannot be discussed in second appeal. (Shah Din, J.)

Daulat Ram a. Gadi Ram.—1 P.R. 1919; 49 I.C. 138.

—*Art. 11—Commencement of Limitation of suit under S. 283 Civil Procedure Code, 1882.*

Where objections filed under S. 278, Civil Procedure Code, were dismissed for want of proof on a certain date, *held*, (i) that the order was one under S. 281, Civil Procedure Code, and a suit under S. 283 could not be brought, under Art. 11 of the 2nd Schedule, Act XV of 1877, more than a year after this date. (ii) that it was not open to the objector to file objections again, as an order under S. 281, Civil Procedure Code, is final, subject to the filing of suit under S. 213, Civil Procedure Code. (Rattigan and Chitty, JJ.)

Mst. Lakhim *v.* L. Dholan Das.—148 P.W.R. 1906.

—*Art. 11 (1)—Declaratory suit—Sale to defraud a creditor.*

A. owed a debt to *B.* who in June, 1903, gave him notice that he would be sued unless he paid up his debt. *A.* failed to pay the debt and *B.* sued him on 19th May, 1904, and obtained a

LIMITATION ACT, Arts. 11 and 12.

decree on 3rd June 1904. In execution of the decree. A's wife objected to the attachment of property basing her claim on a sale effected by *A.* in her favour on the 7th August, 1903, in consideration of her dower. The objection was allowed on the 12th January, 1910, B. on the 22nd October 1910, instituted a suit for declaration that the property was liable to attachment under his decree.

Held, (1) that the declaratory suit was within time, Article 11 of the Limitation Act Schedule being directly applicable to the case; even if Art. 91 which had no bearing on the case, applied, the starting point would still be the 12th January, 1910, that being the date when the fact of *B.*'s sale to his wife became known to plaintiff; (2) that *A.*'s sale to his wife was an obviously fictitious transfer to defraud a creditor and not a *bona fide* sale. 6 P. R. 1901, *referred to.* (Kensington, J.)

Raja Ram *v. Mst.* Umdan.—179 P.L.R. 1913; 118 P.W.R. 1913; 18 I.C. 519.

——*Arts. 11 and 125—Declaratory suit on objection being disallowed—Limitation.*

When the reversioner's objection preferred under section 278 of the Civil Procedure Code, that attachment of house in execution of mortgage decree against the mortgagor, a widow was invalid as against his reversionary interest was disallowed and he instituted a suit under section 283 to established his right *Held*, that the suit was maintainable and that article 11 and not 125 of the second Schedule of the Limitation Act was applicable to it. (Clark, C. J. and Reid, J.)

Sant Ram *v.* Ganga Ram.—122 P. L. R. 1904; 52 P. R. 1904.

——*Art. 11—Execution of decree—Attachment objection against—Declaratory suit—Limitation when objection is not wholly adjudicated upon.*

Held, that where the executing Court by some oversight or under some misapprehension omits to pass any order either under section 280 on 281 on merits, regards any property covered by the objection under section 278 Civil Procedure Code (Act XIV of 1882), a suit under Section 283 of the Code is not governed by Article 11 of 2nd Schedule to Act XV of 1877. 87 P. R. 1904, *referred to.* (Shah Din, J.)

Bhagwanti *v.* Goman.—42 P. R. 1909; 58 P. L. R. 1909; 52 P. W. R 1909; 1 I. C. 742.

—— Art. 11 (1)—Execution sale—Objections not investigated—Summary rejection—Suit, for possession of property—Art. 144 applicable. *See* Limitation Act, Arts. 144 and 11.

72 P. W. R. 1915; 29 I. C. 731.

——Art. 12 (*a*)—Applicability—Declaratory suit under O. 21, R. 63 C. P. Code—Limitation. *See* Limitation Act, Art. 11.

179 P. L. R. 1913; 18 I. C. 519.

LIMITATION ACT, Art. 12.

——*Art. 12—Applicability of—Execution sale—Suit by strangers to set aside—Limitation.*

Art. 12 applies to suits brought by parties to the decree which resulted in the sale or by parties to the proceedings in which the sale took place or by persons claiming through them and does not apply to suits brought by persons who are not bound by the sale. Nor does the article affect a defence set up by a party in possession. (Brodway and Martineau, JJ.)

Tara Chand *v.* Abdul Ahad.—67 I. C. 894.

——*Art. 12.—Limitation—Shamilat land—Suit for possession by partition of shamilat land—Wrong entry in revenue records.*

The plaintiffs, alleging that the *shamilat* land in suit pertained to a certain *patti*, brought a suit for possession of their share by partition against the defendants who claimed that it belonged to the whole village. In the Settlement Record of 1885 the land was recorded as *shamilat deh* of the whole village. The suit was dismissed on the ground that a suit for declaration that the Record was erroneous was barred under Article 120 of the Limitation Act at the time the suit was brought.

Held, that the suit was not barred by limitation, the cause of action, being recent invasion by the defendants of the rights of the plaintiffs and the refusal by the Revenue Court to effect partition. The statement in the plaint that the Record was erroneous did not make the correction of that Record a condition precedent to the relief claimed being decreed. (Reid, C. J.)

Teju *v.* Kanhaya.—p. 43 P.W.R. 1906; 151 P. L. R. 1906.

——Arts. 12 and 144—Minor—Sale of his property in execution of decree in suit in which he was not properly represented—Suit by him after attaining majority to recover such property—Limitation. *See* Minor—Decree against.

113 P. R. 1918; 48 I. C. 399.

——*Art. 12 (a)—Minor—Suit to set aside execution sale—Irregularity.*

A suit for possession of the property sold in execution of such a decree is governed by Art. 12 of the Limitation Act. (Scott Smith, J.)

Imam Din *v.* Puran Chand.—1 Lah. 27; 55 I.C. 833.

——Art. 12 (b)—Minor, suit to set aside sale—Limitation—Suit to be brought within one year of majority. *See* Limitation Act, Ss. 6 and 8.

30 P.W.R. 1918; 40 P.L.R. 1918; 43 I.C. 712.

——*Arts. 12 (a) and 144—Objection by third party to attachment and sale of immoveble property—Objection disallowed—Sale confirmed—Suit for possession by objector—Objector not party to decree.*

Whenever an auction-sale takes place, there are always certain people who are bound by it to this extent that if they wish to avoid it, they must sue directly to have it set aside, but there are also persons who may simply ignore the sale. 25 Cal. 179, *referred to.*

An objector, who was not a party to the decree, under which the sale took place, and whose original title to the immoveable property

LIMITATION ACT, Arts. 12, 14, 29 and 30.

sold is not denied, can ignore the sale. A suit by such an objector for possession of the sold property against the auction-purchaser is governed by Article 144 and not by Article 12 of the Limitation Act. 25 Bom. 337; 32 Cal. 296; 26 All. 346; 20 Mad. 118, *relied upon*. (Johnstone, J.)

Saif-ud-Din *v.* Hans Raj.—15 P.R. 1912; 252 P.W.R. 1911; 203 P.L.R. 1911; 11 I.C. 76.

——*Art. 12—Suit to set aside sale—Suit for possession of immoveable property.*

The property in suit was sold by auction in execution of a decree. Pending confirmation of sale the plaintiff purchased the property from the judgment-debtor who paid the decree money in Court. The sale was then set aside and the property was released from attachment. On appeal the sale was confirmed. The plaintiff relying on the sale in his favour sued the auction purchaser for possession of the property. *Held*, that article 12 of Schedule II of the Limitation Act applied to the suit. (Robertson and Rattigan, JJ.)

Nagina Singh *v.* Puran Chand.—11 P R. 1906; 4 P. L. R. 1906; 24 P. W. R. 1906.

——Art. 14—Declaratory suit to share in shamilat—Rejection of claim by Revenue Officer—Article not applicable. *See* Limitation Act, Arts. 120 and 14.

136 P.W.R 1916; 150 P.L R. 1916; 47 P. R. 1916; 34 I. C. 546.

——*Arts. 29, 52, 96, 120—Money paid by defendant not liable to pay into Court and realized by decree-holder—Limitation.*

Held, that a suit to recover the money voluntarily paid into Executing Court by a defendant under the mistaken belief that the defendant is liable to pay it on account of costs, &c. and wrongly received by the plaintiff from the said Court is governed either by article 97 or 120 and not by either article 29, 62 or 96 of the 2nd Schedule to Act IX of 1908. 30 Cal. 440, *referred to*. 8 Bom. 17, *doubted*. (Rattigan, J.)

Fazl-ud-Din *v. Mst.* Zainab.—49 P. W. R. 1910; 6 I. C. 654.

——*Arts. 30, 31 and 115—Misdelivery not undelivery—Loss of goods by carrier - Applicability of Art. 115.*

Held, that, the words' against a carrier for *losing* or injuring goods' in Article 30, Schedule I, Indian Limitation Act IX of 1908, obviously suggest not a mere loss of the goods to the owner, which might be caused by misdelivery, but an actual losing of goods by the carrier himself. 6 P. R. 1897, *referred to*.

Held, also, that misdelivery or delivery to a wrong person in breach of agreement cannot be regarded as non-delivery of goods within the meaning of Article 31, Schedule I of the Limitation Act. The case of misdelivery falls within the purview of Article 115 of the Act. (Rattigan, J.)

Fakir Chand *v.* Secretary of State.—170 P. L. R. 1913; 122 P. W. R. 1913; 19 I. C. 477.

LIMITATION ACT, Art. 31—44.

——*Art. 31—Limitation—Railway—Carrier—Suit against, for compensation for non-delivery of goods.*

Held, that article 31 of the second schedule of the Limitation Act, 1877, as amended by Act X of 1899, is applicable to a suit against a Railway for compensation for non-delivery of goods. 3 Mad. 107, 240; 12 Cal. 477; Chief Court C. R. No. 135 of 1904, *dissented from*. 19 Bom. 165; 26 Bom. 562, *followed*. (Chatterji, Kensington and Chitty, JJ.)

Moti Ram *v.* East Indian Railway & Co.—108 P.R. 1906; 2 P.L.R. 1907; 33 P.W.R. 1907.

——*Arts. 32, 120. 142, 144 & 146 A—Limitation—Suit to remove encroachment on public way—Continuing Cause of action—Suit to oust defendant from Shamilat.*

Held, that a suit by a member of the proprietary body of a village against another for ousting the latter from the encroachment made by him upon the *shamilat* land devoted to the purposes of a road for inter-village communication, and for restoring it to its original use, is not governed either by Arts. 32, 142 or 144 or 146 A but by Art. 120 of the Limitation Act (1908), and the time begins to run from the date of trespass. It is not also a continuing wrong to which the provisions of S. 23 of the said Act can apply.

OBITER :—*Held*, also, that Art. 114, like 142, applies to suits for possession based on plaintiff's own title. (Reid, C.J.)

Achar Singh *v.* Badhawa Singh.—124 P.R. 1912; 2 P.L.R. 1913; 132 P.W.R. 1912; 15 I.C. 285.

——*Arts. 40, 118 and 120—Trade-mark—Infringement—Suit for injunction and damages—Limitation—Maintainability—Acquiescence—Effect—Sp. Ref. Act, 56, (h).*

The period of limitation applicable to a suit for damages for infringing a trade-name or a trade-mark—a trade-name or mark being an exclusive privilege—is contained in Article 40 of Schedule I to the Limitation Act.

In a suit for an injunction to restrain the defendant from using a trade-name and from infringing the plaintiff's trade-mark, it appeared that the plaintiff had taken no action beyond sending a notice to the defendant and that he had stood by for five years before coming forward with a suit, *Held*, that, in the circumstances, the plaintiff was not entitled to the injunction *vide* section 56 (*h*) of the Specific Relief Act. (Scott Smith and Martineau, JJ.)

G. G. Varcados *v.* D. C. Mcleod.—45 P.R. 1919; 83 P.L.R. 1919; 51 I.C. 434.

——*Arts. 44, 91 and 144—Applicability*—De facto *guardian—Alienation—Suit by ward to recover possession.*

A suit by a ward, who has attained majority, for possession of immoveable property transfered by his *de facto* guardian, is governed by Art. 144, and not Art. 44, Limitation Act.

Where materials on record are sufficient to dispose of a case, the appellate Court should not remand the case to the original

LIMITATION ACT, Art. 44.

Court for re-trial, but pass such judgment as the circumstances of the case require. (Kensington, J.)

Rupa Shah *v.* Irshad Ali.—180 P.L.R. 1912; 234 P.W.R. 1912; 16 I.C. 847.

——*Arts. 44, 91, 144—Alienation by* de facto *guardian of minor—Suit by minor for possession of property alienated—Void alienation—Cancellation of document not necessary.*

A suit by a Muhammadan for possession of land sold during his minority by his *de facto* guardian is governed by Art. 144 of the Limitation Act, and not by Arts. 44 and 91. The alienation of a minor's property being *ab initio* void, he is entitled to treat the transaction as a nullity and is not bound to sue for cancellation of the sale deed. (Shah Din and Scott Smith, JJ.)

Uttam Singh *v.* Barkat Ali.—15 P.R. 1913; 202 P.L.R. 1913; 19 I.C. 235.

——*Arts. 44, 144—Alienation by guardian—Suit for possession.*

Held, that in the case of an alienation by an authorised guardian the person aggrieved must sue within three years of his coming of age. 34 A. 213; 32 A. 392; 14 M. 26; 30 M. 393; 38 M. 1125; 34 I. C. 188; 55 P. R. 1903, *referred to.* (Wilberforce, J.)

Tara Chand *v.* Murli Dhar.—3 Lah.L.J. 280; 61 I. . 384.

——*Arts. 44 and 91—Hindu Law—Joint Hindu family—Alienation—Suit by minor member after attaining majority against vendee for possession of his share in immoveable property.*

The plaintiff's brother during his minority sold the joint family land to the defendant including the share of the plaintiff After expiry of three years from the date of plaintiff's attaining majority he sued for his share of the land. The suit was dismissed as barred by limitation under Article 44 of the Limitation Act. On second appeal it was contended for the respondents that the suit was rightly dismissed and that it was in any case barred under Article 91. *Held*, that the suit was not barred, that neither Article 44 nor 91 was applicable to the case and that the plaintiff had 12 years to sue for possession of the land.

That the sale must be regarded as one made by the adult members of the family on behalf of the entire co-parcenary body including themselves and their youngest brother. The alienation could not be viewed as one made on behalf of the minor by his guardian to make Article 44 applicable, for minor's undivided share in joint family estate is not property which can be dealt with by his guardian. I. L R. 25 All. 407 at p. 416 (P. C.), *referred to.*

That Article 91 is not intended to apply to suits for possession of immoveable property alienated by managers of joint families and endowments or by Hindu widows or others persons whose powers are restricted. In such cases if the person who executes the documents had no authority in law to execute it, the plaintiff need not sue to set it aside. An express prayer in the plaint for the cancellation of such an instrument may be treated as not

LIMITATION ACT, Arts. 44 and 47.

an essential part of the plaintiff's relief. I. L. R. 14 Mad. 26; I. L. R. 24 Cal. 77 at p. 82; I.L.R. 16 All. 73, *referred to.* (Shadi Lal and Le Rossignol, JJ.)

Radhu Ram *v.* Malak Mohan Singh.—84 P. L. R. 1915; 96 P. W. R. 1915; 29 I. C. 199.

——*Arts. 44, 91 and 144—Minor—Alienation by unauthorised person—Suit to set aside—Limitation.*

Held, that a major brother is not guardian of his minor brothers under the Mohammadan law, consequently a minor brother on attaining majority can bring a suit for possession of the property alienated by his major brother alleging himself as his guardian.

Held, also, that Articles 44 and 91 of the Limitation Act do not but Article 144 of the Act govern the case and the suit is within time. 73 P. R. 1890 (F. B.); 28 P. R. 1909; 170 P. W. R. 1908; 15 P. R. 1913; 307 P. W. R. 1912; I. L. R. 32 All. 392; 57 P. R. 1891; 19 P. R. 1902, *distinguished.*

Held, further that it is now firmly established that Article 91 is restricted to a suit between the parties to the instrument or their successors-in-interest and that a plaintiff is not bound to set aside an instrument not executed by himself or by his predecessors-in-title. 23 P. R. 1904; 34 All. 213, (P. C.), *overruled.*

Held, lastly that where an applicant (a *pardanashin* lady) in this case makes an application for legal representative after the expiry of six months and is unaware of the fact that the legal representatives are minors, or that an appeal is pending in any court; time may be extended. (Shadi Lal and Leslie Jones, JJ.)

Sajjad Ali *v.* Muhammad Zulfikar Ali Khan.—83 P.R. 1916; 125 P.W.R. 1916; 33 I. C. 943.

——*Art. 44—Suit for possession by a ward who has attained majority, against his guardian and the person whom the guardian has transfered the share of the ward.*

Held, that Article 44, Schedule II of the Limitation Act applies to a suit for possession by partition by a ward who has attained majority, against his guardian and the person whom the guardian has transferred the share of the ward. Where a special period of limitation for the removal of an obstruction to the plaintiff's possession is provided, the plaintiff cannot ignore that provision and come in within twelve years of the act complained of with a suit for possession. 71 P. R. 1901 and I. L. R. 25 Bom. 337 (P.C.), *followed.* (Reid, J.)

Said Shah *v.* Abdul Shah.—19 P.R. 1902; 183 P.L.R. 1901.

——*Art. 47—Order of attachment under S. 146, Cr. P. Code—No suit—Disposal of produce.*

Where an attachment has been made under S. 146 of the Criminal Procedure Code and no suit was brought to declare the rights of parties, an order of District Magistrate refusing to hand

LIMITATION ACT, Arts. 47, 48 and 49.

over produce to one of the parties is correct, but he cannot treat it as derelict and as property of Government. (Shah Din, J.)

Mohar Singh *v.* Emperor.—123 P.L.R. 1911; 18 P.W.R. 1911 Cr.; 12 Cr. L.J. 403; 11 I.C. 587.

—— *Art. 47—Order of Magistrate, defect in—Effect on applicability of article—Civil Court—Jurisdiction to declare order void—Part of property affected by order subject to mortgage—Effect.*

Under Art. 47 the three years' limitation provided for by it will run from the date of the final order of the Magistrate against the plaintiff. The article does not make it a condition of its applicability that the order of the Magistrate should be a valid order. Further a Civil Court has no jurisdiction to declare the order of the Magistrate void on the ground that it is defective.

The applicability of the article is not affected by the fact that part of the property covered by the Magistrate's order is subject to a mortgage and that the mortgagee is in possession thereof. (Kensington and Chevis, JJ.)

Bhagwan Das *v.* Bhana Mal.—84 P.R. 1912; 137 P.W.R. 1912; 14 I.C. 566.

—— *Art. 48—Suit to recover stolen property or damages.*

A suit against an innocent person to recover stolen property or its value as damages is governed by Article 48 of the Limitation Act, and time begins to run from the date the plaintiff knew that the property had come into the defendant's possession. (Rattigan, J.)

Sohan Singh *v.* Mul Singh.—148 P.W.R. 1911; 229 P.L.R. 1911; 11 I.C. 446.

—— Art. 49—Contribution suit—*Resjudicata*—Question left open by Court—Limitation—Starting point of limitation. *See* Limitation Act, Art. 61.

Taja Khan *v.* Muhammad Khan.—71 P.L.R. 1911; 66 P.W.R. 1911; 10 I.C. 839.

— *Arts. 49, 83 and 115—Suit by Commission agent for recovery of losses on transactions—Commission fees and value of goods not returned.*

Plaintiffs as commission agents entered into certain transactions with third parties on behalf of defendants and sued the latter for the recovery of sums which they alleged to be due on account of (*i*) actual losses, (*ii*) *ahrat*, (*iii*) *dalali*, (*iv*) *dharman* (*v*) stamp charges, (*vi*) the value of empty bags not returned and (*viii*) re-draft paid for defendants.

Held, (1) that the claim so far as it related to the value of empty bags not returned was governed by Article 49 of the Limitation Act; (2) that the claim so far as the losses and re-draft were concerned was governed by Article 83. 23 P. R. 1915; 35 P.W.R. 1915; 26 Ind. Cas. 415, *followed*. (3) that the claim for commission fees (*arhat*) was governed by Art. 115. I. L. R. 39 All. 81; 36 Ind. Cas. 371; 14 A. L. J. 873, *followed*. (Leslie Jones, J.)

Uttam Singh *v.* Ram Kanwar.—149 P.W.R. 1917; 42 I.C. 72.

LIMITATION ACT, Arts. 49—52.

——*Arts. 49 and 62—Suit for recovery of books and deed and sums of money realised by defendant though not intended for plaintiff's use—Limitation.*

Where the plaintiff, a widow, instituted a suit against the brother of her deceased husband, who had taken possession of the deceased's business and the books and documents of title, and realised certain debts and dividends and the widow claimed to be solely entitled thereto. *Held,* (1) That the claim to recover *Bahis* and documents of a business firm which the defendant had taken possession of from the agent of plaintiff's deceased husband wrongfully was governed by Art. 49 Sch. II of the Limitation Act, IX of 1908. (2) That Art. 62 of the Limitation Act applies to every case where defendant, at the time of receipt, in fact or by presumption or fiction of law, receives money to plaintiff's use; and it is not confined to cases where a defendant intended to receive the money to such use but that it extends to all cases where a defendant has received money which in justice and equity belongs to plaintiff under circumstances which in law render receipt of it, a receipt by defendant to plaintiff's use. (Rattigan, C.J. and Martineau, J.)

Mst. Durga Devi *v.* Ram Nath.—85 P.R. 1919; 52 I.C. 580.

——*Arts. 52, 56 and 120—Suit to recover money due on contract for work done and materials supplied—Limitation.*

To a suit for the recovery of the price of work done and of materials supplied on a contract to build a house, Article 120 of the Limitation Act applies, Articles 52 and 56 being inapplicable to the case. (Reid, C.J. and Beadon, J.)

Radha Kishen *v.* Basant Lal.—103 P.R. 1913; 81 P L.R. 1914; 22 I.C. 576.

——Arts. 52, 56 and 115—Suit for recovery of money due under a contract for supply of materials and construction of flooring—Limitation Act, Art. 115 applicable, *See* Limitation Act, Arts. 115, 52 and 56.

2 Lah. 376.

——*Arts. 52 and 115—Suit for recovery of price of articles—Limitation.*

Where the plaintiff is suing for a sum of money as representing the price of certain articles sold by him to the defendant Art. 52 and not Art. 115 of the Limitation Act applies to the case. (Rattigan, C. J.)

Ganga Ram *v.* Nanda.—65 I.C. 687.

——*Arts. 52, 65, 115 and 120—Suit for recovery of the value of grain advanced—Limitation.*

Art. 52 of the Limitation Act refers to suits for the price of goods sold and delivered, and when grain is advanced on a contract that it should be repaid in kind, it is not a case of goods being sold for the words "goods being sold" refer to a case in which the contract is to pay for the price of the goods in money and not to return them in kind. 49 I. C. 231, *referred to.* 2 Lah. L .J. 191, *followed.* To

LIMITATION ACT, Arts. 52 and 57.

such a case Art. 115 of the Limitation Act or Art. 65 would apply. (Chevis and Broadway. JJ.)

Mahomed Din *v.* Sohan Singh.—4 Lah L.J. 268; (1922) Lah. 271; 65 I.C. 691.

——*Arts. 52 and 115—Suit for recovery of money—Price of articles sold—Limitation—Punjab Loans Limitation Act (I of 1904), Art. 52.*

Held, that the plaintiff is suing for a sum of money as representing the price of certain articles sold by him to the defendant, and to such a suit Article 52 of the Limitation Act is clearly applicable and not Article 115.

Held, consequently, that the suit is within time under Article 52 of the Limitation Act as extended by the Punjab Loans Limitation Act. (Rattigan, C.J.)

Ganga Ram *v.* Nanda.—2 Lah.L.J. 191.

——*Arts. 57, 64 and 85—Account stated—Closed account—Open and current account—Balance struck—Subsequent loans and payments—Suit for recovery of money—Limitations.*

An account is said to be stated only when there have been cross-demands between the parties and the balance struck then becomes the consideration for the discharge on either side. Such an account stated amount to a new contract and is a substantive cause of action. 33 L. J. Q. B. 43; 12 W. R. 76; 129 P. R. 827, *referred to.*

When in striking the balance of an account interest at a certain rate is charged, it must be presumed that the same rate is to be chargeable till payment.

Plaintiff advanced loans to defendant from time to time and in re-payment defendant occasionally passed gram to plaintiff, which the latter sold and credited to the former's account. After some months the accounts were examined and a balance struck in plaintiff's favour. Subsequently defendant borrowed more money from plaintiff and over paid him in this latter account. Plaintiff, after giving credit in the previous account of this overpayment in the subsequent open account, claimed the balance under the former account averring an oral agreement for re-payment of balance with interest.

Held, that plaintiff's suit was on a closed account and not on an open account and that it was governed by Article 64 or by Article 57 of the Limitation Act as amended by the Punjab Loans. Limitation Act and not by Article 85 of the Limitation Act. 178 P. L. R. 1915; 118 P. W. R. 1915; 16 P. R. 1916, *distinguished.* (Shadi Lal and Le Rossignol, JJ.)

Ishar Das *v.* Harikishen Das.—148 P. W. R. 1917; 7 P. L. R. 1917; 35 I. C. 557.

——*Art. 57—Advance in kind and cash—Suit to recover, not governed by Art. 57.*

A suit for recovery of money on accounts of advances made by the plaintiff to the defendant in kind (grain) and cash is not governed by Article 57 of the Limitation Act. (Chevis, J.)

Budh Ram *v.* Ralli Ram.—103 P. W. R. 1916; 37 I.C. 300.

LIMITATION ACT, Arts. 57, 60 and 61.

——*Arts. 57, 115 and 120—Suit for recovery of amount due on grain advances with interest.*

Held, that a suit for recovery of money equivalent to advance in grain together with interest thereon falls under Article 65 or article 115 of the Limitation Act, Sch. 2, and is not governed by six years' limitation under Article 57 or Article 120. (Kensigton, C. J.)

Mengha Ram *v.* Hassu.—41. P. R. 1918 ; 49 I. C. 231.

——*Arts. 60, 145—Applicability—Money left with another to be repaid on demand—Suit to recover.*

The plaintiff sent some money from America to his father-in-law, to be repaid to him on demand and to be kept in deposit till then.

Held, that section 10 of the Limitation Act was not applicable to the suit and that Article 60, and not article 145. governed the claim. 34 P. R. 1898, I. L. R. XXXVII Mad., 175 *followed*. XX C. W. N. 232, VI C. L. J. 535, *not followed*. (Rattigan, C. J.)

Dalipa *v.* Labhu Ram.—65 P. L. R. 1918 ; 4 P. R. 1919 ; 166 P. W. R. 1918 ; 47 I. C. 592.

——*Arts. 60, 89 and 106—Joint purchase, suit to recover money paid for—Transaction, nature of.*

In a suit to recover money paid by the plaintiff to the defendant, to be used in a joint purchase of property : *Held*, that, as the defendant was acting as the agent of the plaintiff, within the meaning of Article 89, Schedule I, of the Limitation Act, Article 60 or 106 of the said Act did not apply. (Shadi Lal and Le Rossignol, JJ.)

Jetha Ram *v.* Mehnga Ram.—66 P. W. R. 1916 ; 33 I. C. 438.

——*Art. 61—Contribution—Suit for—Limitation—Res-judicata—Question left open by Court.*

In a suit for contribution by the plaintiffs on the allegation that they were made to pay in execution of a decree to a creditor whom they and the defendants owed money jointly not only what was due by them but also the share which the defendants were liable to contribute.

In the suit in which the decree was obtained against all the parties to the present suit the creditor had stated that the present defendants had made certain payments to him on their own account. But the present plaintiffs denied it and urged that the creditor was in collusion with the present defendants and the Court without deciding the point passed a decree for the balance that was admitted to be due to him. The defendants pleaded in the present suit that the former judgment operated as *res-judicata* and the present suit was barred by limitation. *Held*, that the pleas had no force for—(1) the Court in the former suit had left the question of liability of the parties *inter se* open and (2) the limitation began to run against the present plaintiffs from the date on which, having paid off the whole of their own share, they began to pay the share of the defendants. (Johnstone, J.)

Taja Khan *v.* Muhammad Khan.—71 P. L. R. 1911. 66 P. W. R. 1911 ; 10 I. C. 839.

LIMITATION ACT, Arts. 61 and 62.

——*Arts. 61, 81 and 120—Suit to recover money paid to a decree-holder by plaintiff in discharge of decree against defendant.*

The plaintiff executed a bond whereby he agreed to pay a decree-holder the amount due by his judgment-debtor under a decree the decree was certified as satisfied and the amount was subsequently paid off by him. He sued the sons of the judgment-debtor, after the latter's death to recoup himself the money paid by him. *Held* that Art. 120, Limitation Act, was applicable to the suit, and Articles 61 and 81 did not apply. (Johnstone, J.)

Mansur Khan *v.* Gaman Khan.—146 P.L.R. 1909; 4 I. C. 1041.

——*Arts 61 and 120—Taking over a liability from third person—Limitation.*

Quaere.—Where *A* takes over the liability of a debt due to *C* by *B*. does the period of limitation for a suit by *A*. for the recovery of the money from *B* commence from the date of payment of the debt by *A* to *C* or from the date of *A*.'s, taking over the liability, in other words, is the case governed by Article 61 or by Article 120, Schedule II, Limitation Act. 146 P. L. R. 1909 S. C., 4 Ind. Cas. 1041, 41 P. R. 1904; 29 All. 627 S. C., 4 All. L. J. 501 S. C., All. W. N. (1907) 214, *considered* (Chevis, J.)

Jalu *v.* Samand.—204 P. L. R. 1911; 231 P. W. R. 1911; 11 I. C. 60.

——Art. 62—Applicability of—Money had received—Intention to receive money on behalf of plaintiff not essential—Fiction or presumption of law. *See* Limitation Act, Arts. 49 and 62.

85 P. R. 1919; 52 I. C. 580.

——*Art. 62—Building contracts—Over payments—Money obtained in execution of decree—Not recoverable so long as decree stands.*

The plaintiff entrusted the defendants contractors, with the building of three different masonery works for the plaintiff and paid them from time to time on account the sum of Rs. 34,433. The total amount of the value of all these three works was 33,202. Subsequently, the defendant obtained decrees for Rs. 3,500 and Rs. 1,400 for two of the works, and recovered the amounts of the decrees from the plaintiff in execution proceedings. The plaintiff sued the defendants for recovery of the amount over paid to them and also for the amount of the decrees wrongfully received by the defendants in execution. *Held*, that these sums upon plaintiff's allegations, must be regarded as moneys payable by defendants to the plaintiff for moneys received by defendants for the plaintiff's use, within the meaning and for the purposes of Article 62 of the Limitation Act.

Held, also, that as the amounts of decrees were paid in execution of the decrees obtained by the defendants, plaintiff could not ask for a refund so long as those decrees subsisted. (Rattigan and and Beadon, JJ.)

Roman Catholic Mission at Rawalpindi *v.* Sunder Singh.—88 P.L.R. 1914; 67 P.W.R. 1914, 22 I.C. 592.

LIMITATION ACT, Art. 62.

— *Art 62 and 120—Land Acquisition—Suit for recovery of compensation money.*

Held, that a suit for a share of compensation money for the house acquired by the Government brought within 3 years of the date of final award is not time-barred. (Broadway, J.)

Abdul Hamid *v.* Muhammad Sharif.—2 Lah.L.J. 353.

—*Art. 62—Lease of jaghir—Lease put an end to—Lessee recovering rents from tenant—Suit by lessor for the amount.*

Where a certain jaghir was leased out and the lessee continued to collect the rents even after the lease was put an end to, a suit by the lessor to recover from the lessee the amounts so recovered was governed by Art. 62 of the Limitation Act. (Johnstone and Shah Din, JJ.)

Kirpa Ram *v.* Major Raja Jaichand.—140 P.L.R. 1914; 46 P.W.R. 1914; 23 I.C. 445.

—*Arts. 62, 120 and 131—Limitation—Jagir—Suit to establish right —Suit for recovery of Jagir money.*

Article 131 of the Limitation Act refers merely to a suit to *establish* right of periodically recurring nature, and the cause of action is the refusal of plaintiff's enjoyment of such right. It does not extent to cover cases in which a plantiff seaks to recover specific sums of money due to him on the basis of such recurring right. Such cases are governed by Article 120. 10 Mad. 115 *not followed*. 146 P.R., 1882; 154 P.R. 1889; 108 P.R. 1901, *referred to*. (Johnstone and Rattigan, JJ.)

Dost Muhammad Khan *v.* Sohan Singh.—83 P.R. 1906; 89 P.L.R. 1907; 126 P.W.R. 1906.

— *Arts. 62 and 120—Money received for plaintiff's use—Suit to recover interest from holder of Govt. Pro. Notes—Pendency of previous litigation as to right to the same*

In 1898 one D assigned all his rights in certain Government Promissory Notes to the plaintiff and to some other persons, and the latter in turn transferred all their rights in the said Notes to the plaintiff. The creditors of D attached the Notes as his property and the plaintiff's objection claiming the Notes as his own was disallowed. In May 1900 the plaintiff filed a suit to establish his right to the Notes against the decree-holders and also (*inter alia*) the present defendant, agent of D in whose names the Notice then stood. The claim was decreed eventually by the Divisional judge on the 10th November 1904, and the decree was confirmed on appeal by the Chief Court on the 18th May 1908.

In the present suit the plaintiff claimed from the defendant interest on the Notes realized by the defendant for a period from 1st November 1898, the date of the assignment to the 30th June 1905, and further interest on the sum claimed from the 20th June 1905. It was pleaded that the suit was barred under Art. 62 of the Limitation Act. For the plaintiff it was contended that Art. 120 and not Art. 62 applied to the case.

Held, that the plea was valid and the suit must be dismissed for, in the previous litigation, neither D nor defendant in any wise

LIMITATION ACT, Art. 62.

contested the right of plaintiff to the Notes, and consequently the defendant, when he recovered the interest, must be taken to have received it for the use of his principal D or the assignee from him, the plaintiff. (Reid, C. J. and Rattigan, J.)

Chand Mal *v.* Sansar Chand.—36 P.R. 1913; 16 P.L.R. 1913; 17 I.C. 311.

——*Arts. 62, 89 and 120—Principal and agent—Accounts—Suit for rendition of accounts against agent's heirs—Rendition of accounts, meaning of—Refusal, what constitutes.*

Where the suit is instituted against the heirs of a deceased agent for rendition of accounts as regards the receipts by the deceased agent of the rents and profits of the plaintiff's property which was under his control during his life-time with a prayer that the amount found due might be directed to be paid out of the estate of the deceased agent in the hands of his heirs:

Held, that, to such a suit, neither Art. 62, nor Art. 89 of the Limitation Act would apply but that Art. 120 would apply. 96 P.R. 1888; 10 C. 860 and 31 A. 429, *referred to* and that limitation would run from from the date of the agent's death.

The correct interpretation of Art. 89 is to hold that the refusal by the agent to render account as mentioned therein must be an express refusal on a definite date and not merely a virtual refusal to be inferred from the omission or the failure on his part to fulfil a promise made by him to render the accounts to the principal in answer to a demand by the latter. 3 C.L.R. 446; *not followed*. 11 C.L.J. 43, *not in point*. (Johnstone and Shah Din, JJ.)

Fatima *v* Imtiazi Jan.—1 P.R. 1912; 33 P.W.R. 1912; 59 P.L.R. 1912; 13 I.C. 930.

——*Arts. 62 and 131—Suit for arrears of jagir—Income wrongfully withheld—Limitation.*

In 1852 R granted to K. a *patta* to the effect that the value of his *Jagir* income in *Mauza Khera* would be estimated at Rs. 2,597 that lesses would collect in kind and after paying Rs. 2,257 in cash to the lessor the lesses would keep the balance Rs. 250, more or less for himself.

Before the settlement and other Revenue authorities R unsuccessfully contested that the *patta* of 1852 was limited to the term of the settlement and that it was revocable at its end. In 1909, at last, R. sued K. in the Civil Court for recovering from K. six years' arrears of *Jagir* income wrongfully realized and kept by K. briefly on the ground that the *patta* was revocable by him after the term of the settlement and that it was actually revoked.

The pleas *inter alia* were that:—

(1) The lease was one in perpetuity, (2) the suit was barred by limitation and (3) R. was estopped from cancelling the lease.

Held, that, (1) The lease of 1852 was limited to the term of the settlement and R. was entitled to revoke it at the end of that settlement. C. A. 169 of 1903, *followed*. (2) That the suit is governed by Article 62 of the 1st Schedule to Act IX of 1908